

1998 SUNSET REVIEW

Colorado Civil Rights Division and the Colorado Civil Rights Commission

Colorado Department of Regulatory Agencies



Office of Policy and Research

October 15, 1998

Members of the Colorado General Assembly
c/o The Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Civil Rights Commission and the Colorado Civil Rights Division. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 1999 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes, which states in part:

"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination . . ."

The report discusses the question of whether there is a need for the regulation provided under Parts 3 - 8 of Article 34 of Title 24, C.R.S. The report also discusses the effectiveness of the Commission and Division in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia
Executive Director

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Executive Summary

The Department of Regulatory Agencies (DORA) has concluded its Sunset Review of the Colorado Civil Rights Division (CCRD) and the Colorado Civil Rights Commission (CCRC). The CCRD and the CCRC are responsible for accepting and investigating complaints of unfair discrimination in the areas of employment, housing and public accommodations.

DORA reviewed CCRD/CCRC's procedures, enforcement statistics, held interviews with employees of the CCRD, interviewed several attorneys involved in civil rights law, and surveyed individual citizens and citizen groups involved in the process. After reviewing all the information collected, DORA recommends the continuation of the CCRD and the CCRC in addition to a number of other statutory and administrative recommendations.

This review recommends that Colorado law be amended to equate employment discrimination remedies awarded by the CCRC with Federal remedies. This recommendation addresses the problem of charging parties seeking federal remedies through request of a right to sue letter from the Colorado Civil Rights Commission. The very purpose of CCRC as an administrative remedy separate from costly and lengthy litigation is jeopardized by this trend. It is reasonable to conclude that the right to sue letter is requested because of the broader remedies that are available through the federal court, despite the disadvantages of that process.

The sunset recommendation, if adopted by the General Assembly, would allow the CCRC to order punitive damages equivalent to those available under federal law against non-governmental entities.

The report also recommends that the Commission's mandate be amended to specifically include the ability to mediate dispute resolutions as a means of eliminating intergroup tensions and therefore preventing illegal discrimination. This recommendation envisions situations in which all parties voluntarily agree to pursue mediation with representatives of the CCRC.

A recommendation is included to amend the civil rights statute to allow the CCRC to amend its rules defining sexual, ethnic, racial, religious, age, and disability discrimination to enable CCRD to take action in cases where persons subjected to discriminatory working conditions have not suffered financial harm. This recommendation, if adopted, would allow Colorado citizens working for employers of 14 or fewer employees to receive equal protection of the law without filing a costly court action, and would similarly award small employers of the administrative process.

The Department of Regulatory Agencies makes the following recommendations:

- Recommendations 1. The General Assembly should continue the functions and responsibilities of the CCRD/CCRC and set a new sunset date of 2009. 22
- Recommendation 2. The General Assembly should amend Section 24-34-405, C.R.S., to equate employment discrimination remedies awarded by the CCRC with federal remedies so that state remedies include punitive damages, attorney’s fees and compensatory damages. ... 23
- Recommendation 3. The General Assembly should amend Section 24-34-402(1)(a), C.R.S., to protect persons from harassment based on their sex, race, ethnicity, religion, age, or disability in cases that do not involve an economic detriment..... 24
- Recommendation 4. The General Assembly should amend Section 24-34-305, C.R.S., to include crisis intervention for the purpose of mediation, using dispute resolution techniques, as a power and duty of the Colorado Civil Rights Commission..... 25
- Recommendation 5. The General Assembly should amend C.R.S. 24-34-502 (7) (b) (I through III) to conform the criteria for “housing for older persons” to the same criteria in the federal Fair Housing Act..... 26
- Administrative Recommendation 1. The CCRC should continue to be active in meeting with citizen and business groups and report to the General Assembly civil rights issues that are identified as a result of these meetings. 28

Background and History of Regulation

Sunset Process

The function of the Colorado Civil Rights Division (CCRD) and the Colorado Civil Rights Commission (CCRC) shall terminate on July 1, 1999 unless continued by the General Assembly. Prior to termination, it is the responsibility of the Department of Regulatory Agencies (DORA) to conduct a sunset review and evaluation of the CCRD and CCRC.

A sunset review involves the analysis and evaluation of the operations of the CCRD and CCRC and recommends both administrative and legislative changes. The criteria used for a sunset evaluation are found in Appendix A. During the sunset process, the agency being reviewed must demonstrate the need for the program's existence, and that the current regulations are the least restrictive while also protecting the public's interest. DORA's findings and recommendations are submitted via a sunset report to the Legislative Committee of Reference of the Colorado General Assembly with the oversight responsibility for the particular agency being reviewed.

The sunset review process includes an analysis of the statutes, interviews with CCRD staff, CCRC members, state and federal officials and a survey of civil rights groups. Other states' civil rights agencies were contacted and a literature and public documents review was completed. Input was also sought from the Attorney General's Office and other interested parties.

History

In 1951, Colorado became the third state to establish a civil rights agency. The Colorado Anti-Discrimination Act established the Fair Employment Practices Office in the Department of Labor. The same Act gave this Office the responsibility to investigate charges of employment discrimination based on race, creed, color, national origin, or ancestry. However, the Office's authority to resolve discrimination disputes was limited. The Office could file civil suits only for public employees and attempt to arbitrate discrimination complaints involving private employers.

In 1955, the General Assembly renamed the agency the Colorado Anti-Discrimination Commission (the Commission) and gave the Commission authority over governmental agencies and private employers with six or more employees. The Commission was also authorized to issue cease-and-desist orders and to order employers to rehire, reinstate, or promote an employee. In the following years, the Commission became responsible for enforcing the state's fair housing statutes and laws prohibiting discrimination in public accommodations.

Background and History of Regulation

In 1979, the Commission was renamed the Colorado Civil Rights Commission and transferred to the Department of Regulatory Agencies as part of the Administrative Reorganization Act of 1968. In 1984, the CCRD/CCRC's authority over public employees was modified. In State Department of Institutions v. Colorado Civil Rights Commission ex rel. McAllister, 185 Colo.42, 521 P.2d 908, the Colorado Supreme Court determined that the state Constitution gives the State Personnel Board sole authority to determine whether classified state employees have been the victims of employment discrimination. The General Assembly amended the personnel process to make the CCRD/CCRC the investigatory body, while maintaining the Personnel Board's final decision-making authority.

Over the years, the classes of persons protected by the anti-discrimination statutes expanded to also include sex, physical or mental disabilities, familial status, marital status, religion and age. The CCRD's first sunset review was in 1979, with subsequent reviews in 1989 and 1995 (review of investigative subpoena powers in employment cases).

According to the *National Survey of State Laws*, 49 states have statutes protecting the civil rights of state citizens. All but four states, Alabama, Arkansas, Georgia, and Louisiana, have agencies to handle complaints filed under these laws.

The Colorado Civil Rights Division (CCRD)

The CCRD is the state agency directed by law to serve the public through compliance and prevention activities in the area of civil rights. The CCRD's mission is "to assure that all Colorado citizens who are real or potential victims of illegal discrimination are afforded the equal protection of the laws." Colorado civil rights statutes prohibit discrimination in employment, housing and public accommodations.

Colorado statutes state that an individual may not be discriminated against based on race, color, sex, creed, religion, ancestry, national origin, age (employment only), marriage to a co-worker (employment only, employers with 25 or more employees), marital status, familial status (housing and public accommodations only), or mental or physical disability. When charges of alleged discrimination are filed with the CCRD, the director has the responsibility of investigating such cases.

To carry out this obligation, the CCRD has a central office and an outreach office located in Denver and four regional offices throughout the state: Colorado Springs, Greeley, Pueblo, and Grand Junction. The four regional offices are responsible for specific regions of the state. Each regional office and the outreach office is staffed by a senior civil rights specialist who investigates complaints and manages the office. The regional offices also have an administrative assistant. Colorado Springs and Greeley each have a second investigator on staff.

Background and History of Regulation

The CCRD is also responsible for research and education in the area of civil rights. The research and education team concentrates on three areas: researching and reporting on the existence, nature and extent of illegal discrimination, educating both individuals and organizations on anti-discrimination laws and related issues, and resolving and preventing ethnicity-based community conflicts.

Over the past several years, the CCRD has studied areas such as discrimination in mortgage lending and has reviewed new apartment and condominium projects for disability accessibility. The CCRD has provided architects, contractors, individuals, planning officials, investors, salespersons and construction staff with advice on the accessibility standards for such complexes.

Additionally, the CCRD has published brochures to help identify rights and responsibilities of Coloradans with regard to various aspects of the CCRD's jurisdiction. Some of these brochures and pamphlets have included information on mortgage loans and applications, sexual harassment, preventing sex discrimination, preventing job discrimination and housing discrimination.

The Colorado Civil Rights Commission (CCRC)

The CCRC is part of the Colorado Civil Rights Division. The CCRC is composed of seven Commissioners appointed for four-year terms by the Governor with the consent of the Senate. The Governor may remove members for cause.

The Commissioners represent a cross-section of all Coloradans. Two Commissioners represent the business community; two represent state or local government entities; and three are from the community at large. At least four of the seven Commissioners also must represent groups at risk for discrimination because of race, color, ancestry, religion, age, or disability.

The CCRC serves as both an appeal board and a steering committee for the CCRD. Charging parties whose cases the CCRD has dismissed for lack of supporting evidence may appeal the decision to the CCRC. Also any party whom the CCRD finds to have been discriminated against but whose offender refuses to cooperate can appeal to the CCRC to set the case for administrative hearing.

The Commissioners review all findings by the CCRD research and education team, adopt and amend rules and regulations, and recommend to the Governor and the General Assembly any changes or additions to the statutes that the CCRC deems necessary.

Background and History of Regulation

Budget

The CCRD/CCRC operates on moneys appropriated from the state's general fund by the General Assembly. The budget is supplemented by funds provided by the Equal Employment Opportunity Commission (EEOC) and the office of Housing and Urban Development (HUD) in exchange for investigating jointly-filed cases. The following table shows the total budget for the CCRD/CCRC including the outreach office and the four regional offices for Fiscal Year 1994-95 through Fiscal Year 1997-98.

Table 1

**Annual Budget for the Colorado Civil Rights Division/Commission
FY 1994-95 through FY 1997-98**

<i>Fiscal Year</i>	<i>General Fund</i>	<i>Federal Funds</i>	<i>Total</i>	<i>FTE</i>
1997-98	\$1,770,201	\$793,462	\$2,563,663	35
1996-97	\$1,764,840	\$751,137	\$2,515,977	34.5
1995-96	\$1,627,927	\$671,632	\$2,299,559	34.5
1994-95	\$1,538,408	\$643,406	\$2,181,814	34.5

The table below shows the portion of the total budget that is allocated to each regional office.

Table 2

**Budget for the CCRD's Regional Offices
FY 1997-98**

<i>Region</i>	<i>FY 97-98</i>	<i>% of Total Budget</i>
Colorado Springs	\$161,000	6.3%
Denver -- Outreach Office	\$58,900	2.3%
Grand Junction	\$114,000	4.4%
Greeley	\$165,000	6.4%
Pueblo	\$199,000	7.8%
<i>Total</i>	<i>\$697,900</i>	<i>27.2%</i>

Summary of Colorado Statutes

The CCRD and CCRC are charged with enforcing Colorado's laws that prohibit discrimination in housing, employment and public accommodations. The CCRD and CCRC accept complaints of discrimination and investigate those complaints from all individuals protected by the law. Enforcement statistics show that the largest percent of cases filed with the CCRD allege discrimination based on sex. Table 3 displays the bases upon which people may not be discriminated against under the Colorado statutes.

Table 3

<i>Basis</i>	<i>Employment</i>	<i>Housing</i>	<i>Public Accommodation</i>
Race/color	x	x	x
National Origin/Ancestry	x	x	x
Creed/Religion	x	x	x
Sex	x	x	x
Age	x		
Disability Physical	x	x	x
Mental	x		
Familial Status		x	
Marital Status		x	x

Discriminatory and Unfair Employment Practices

Section 24-34-401, et. seq., Colorado Revised Statutes (C.R.S.), establishes those employment practices which are unfair or discriminatory and establishes physical or mental disability, race, creed, color, sex, national origin, ancestry, and age (40 to 70 years old) as protected classes.

Discrimination may be found in written and unwritten policies and practices of an employer. Situations in which a complaint may be filed include: termination, hiring, job advertisements, compensation, promotion, demotion, layoff and recall, and aiding, abetting or coercing in any unfair employment practice. In addition, employers of 25 or more employees may not discriminate against persons who are married to co-workers. A charge of discriminatory or unfair employment practice must be filed within six months of the incident.

The groups regulated under this statute are employers, employment agencies, labor organizations and on-the-job training and vocational training programs and schools. Only two groups are exempted from this statute: religious organizations which do not receive public funds and employers of people working in the domestic service of other persons.

If there is "probable cause" to believe that an unfair employment practice has occurred, the CCRC may order the employer to:

- cease and desist any unfair employment practices;
- correct the result of the unfair employment practices by hiring, reinstating or upgrading an affected employee;
- refer an applicant for employment for membership in a labor organization or for a job training program;
- display posters with the provisions of the civil rights law; or
- initiate other relief that is agreed to by both parties, including affirmative action, paying actual damages but not punitive damages.

Unfair Housing Practices

Section 24-34-501, et. seq., C.R.S., establishes those housing practices which are unfair, and establishes disability, race, creed, color, sex, national origin, ancestry, marital status, familial status, and religion as protected classes.

Housing discrimination may be found in written and unwritten policies and practices. Situations in which a complaint may be filed include the following if committed against a person in a protected class:

- refusing to sell, transfer, rent, or lease;
- refusing to receive and transmit any bona fide offer to buy, sell, rent, or lease, or otherwise to deny to or withhold from any person such housing;
- discriminating against any such person in the terms, conditions, or privileges pertaining to any housing or related transactions, including furnishings and services and obtaining financial assistance;
- making any inquiry or record concerning a protected classification of a person seeking to purchase, rent, or lease any housing, or financial assistance in obtaining housing;

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- including in any transfer, sale, rental, or lease of housing any restrictive covenants, or honoring or exercising or attempting to honor or exercise any restrictive covenants pertaining to housing;
 - printing or advertising in a manner which indicates discrimination relative to the transfer, sale, rental, or lease of housing;
 - aiding, abetting, inciting, compelling, or coercing the doing of any act defined as an unfair housing practice, or obstructing or preventing anyone from complying with this part of the civil rights law; or
 - discharging, demoting, or discriminating in matters of compensation against any employee or agent because the employee or agent complied with the law.

The fair housing statute does not limit local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does this statute apply to restrictions regarding familial status applied to housing specifically designed for senior citizens.

An allegation of a discriminatory or illegal housing practice must be filed with the CCRD within one year of the alleged discriminatory housing practice. In making a determination of "probable cause" regarding a housing violation, the Director of the CCRD shall find that probable cause exists if, upon all the facts and circumstances a person of reasonable prudence and caution would be warranted in a belief that an unfair housing practice was committed.

In addition to the CCRD's general authority to order a respondent to cease committing unlawful practices, it may order a respondent who has been found to have engaged in an unfair housing practice to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of the employee's obedience to the law, or to take affirmative action regarding the granting of financial assistance or the showing, sale, transfer, rental, or lease of housing.

Also, if a charge indicates that a person or entity refused to show housing to a member of a protected class, the CCRC may issue an order that the housing be shown to the party who filed the charge. The CCRC may also petition for injunctive relief, including orders restraining and enjoining the respondent from selling, renting, or otherwise making unavailable to the complainant any housing with respect to which the charge was made, pending the final determination of CCRC proceedings. However, the complainant must give security in such sum as the court deems proper if the respondent was wrongfully enjoined.

Discrimination in Places of Public Accommodation

Section 24-34-601, et. seq., C.R.S., prohibits directly or indirectly refusing, withholding from, or denying the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation, or to indicate through any written communication or advertisement that such refusal or denial would occur. Public accommodations include any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public. Protected classes in this section include disability, race, creed, color, sex, marital status, national origin, or ancestry.

Any charge filed with the CCRD alleging a violation of the public accommodation statute must be filed within 60 days after the discriminatory act occurred. In addition to the CCRC's general authority to order a respondent to cease committing unlawful practices, the CCRC may order a respondent who has been found to have engaged in a discriminatory practice to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of obedience to the law, or to take affirmative action including the posting of notices setting forth the rights of the public.

Discriminatory Advertising

Section 24-34-701, C.R.S., prohibits any communication which is intended to or actually discriminates against members of a protected class in neglecting or refusing to furnish them housing, lodging, schooling, tuition, or any accommodation or convenience of a place of public accommodation enjoyed by the general public. Protected classes in this section include disability, race, creed, color, sex, marital status, familial status, national origin, or ancestry. The prohibitions in this section apply to any owner, agent, or employee of a place of public accommodation, resort or amusement which is defined as "any inn, tavern, or hotel . . . , restaurant . . . , public conveyance . . . , bathhouse, barber shop, theater, and music hall."

Charges alleging discriminatory advertising must be filed with the CCRC within 60 days of the alleged discriminatory act. The CCRC may issue a cease and desist order, order a respondent who discriminated against an employee who complied with the law to rehire, reinstate, or provide back pay to the employee, order a respondent to make compliance reports to the CCRC, and order affirmative action including posting notices of the rights of the public.

Federal Laws

Federal agencies such as the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD) enforce federal civil rights statutes in the areas of employment and housing. Some of their jurisdiction overlaps with that of the CCRC, and other areas are under the federal agencies' sole jurisdiction.

Employment

EEOC has sole jurisdiction over: 1) complaints alleging discriminatory harassment, terms, conditions, and privileges of employment but not monetary loss; 2) complaints of discrimination filed by employees of federal agencies; and 3) complaints filed more than 180 days (but less than 300 days) after the alleged discriminatory action. EEOC's authority comes from Title VII of the U.S. Civil Rights Act of 1964, except for the age discrimination and certain equal pay provisions. Before any persons can file suit in federal court under Title VII, they must exhaust their administrative remedies through the EEOC. EEOC remedies for employment discrimination include punitive damages, compensatory damages, and attorney fees.

The Age Discrimination in Employment Act prohibits discrimination based on age (40 and above), and the Equal Pay Act (part of the Fair Labor Standards Act) prohibits paying unequal pay for equal work based on sex, unless the differential results from a seniority system, a merit system, a system that measures earnings by the quantity or quality of production, or any other factor other than sex. Both Acts are enforced by the EEOC.

EEOC contracts with the CCRD to handle cases in the following areas of joint jurisdiction: employers with 15 or more employees (20 or more for age discrimination), labor unions, and employment agencies for complaints alleging discrimination based on sex, race, color, creed, national origin, ancestry or age.

The Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor also enforces equal employment opportunity and affirmative action laws governing anyone who does business with the federal government. The OFCCP's authority includes recruiting, hiring, training, pay, seniority, promotion and benefits.

Under Section 503 of the Rehabilitation Act of 1973, employers with federal contracts or subcontracts of more than \$2,500 must provide equal job opportunity and affirmative action for mentally and physically disabled persons. Executive Order 11246 prohibits federal and federally-assisted construction contractors and subcontractors from employment discrimination based on race, color, sex, religion or national origin. The order also requires contractors to take affirmative action to ensure that all employment decisions are made in a non-discriminatory way.

Federal Laws

In addition, the OFCCP enforces provisions of the Veteran's Readjustment Assistance Act of 1974, which requires that employers with federal contracts or subcontracts of \$10,000 or more provide equal opportunity and affirmative action for Vietnam and disabled veterans of all wars.

Housing

HUD is the federal agency responsible for enforcing the federal fair housing laws. HUD has primary jurisdiction over complaints alleging systemic or class action charges.

The bases for discrimination complaints which may be filed with HUD include discrimination in the rental, sale, or financing of housing which is based on sex, race, color, creed, national origin or ancestry (title VIII of the Civil Rights Act of 1968). Title VI of the Civil Rights Act of 1964 prohibits excluding any person from participating in or benefiting from any program or activity receiving federal financial assistance on the basis of race, color or national origin. Section 527 of the National Housing Act, as amended, prohibits discrimination on account of sex in extending mortgage assistance and authorizes HUD to enforce this provision.

In addition, Executive Order 110063 (as amended by Executive Order 12259) requires all federal agencies to prevent discrimination in housing and related facilities owned or operated by the federal government or provided with federal financial assistance, and in the lending practices related to residential properties if loans are insured or guaranteed by the federal government. Also, Title VII of the Equal Credit Opportunity Act prohibits discrimination with respect to any aspect of a consumer credit transaction based on race, color, religion, national origin, sex, marital status, or age which is to be enforced by agencies other than HUD.

Cooperative Agreements

With EEOC. The CCRD and the EEOC operate under a Worksharing Agreement in recognition of the instances where the two agencies have common jurisdiction. The agreement is designed to provide individuals with an efficient procedure for obtaining redress for their grievances under appropriate state or federal laws. Although there are instances when state and federal jurisdiction overlap, there are circumstances when no jurisdictional overlap occurs. For example, Title VII of the Civil Rights Act of 1964 applies to certain employers and organization with 15 or more employees. The Act does not apply to employers and organization with less the 15 employees. Those employers and employees are governed by the Colorado civil rights laws.

Federal Laws

According to the Workshare Agreement and CCRC rules, the Denver Regional Office of the EEOC and the Denver Office of the CCRD have each designated the other as its agent for the purpose of accepting and drafting charges of employment discrimination.

In cases wherein either CCRD or EEOC has sole jurisdiction, each agency informs charging parties of their need/right to file with the other agency, helps draft charges on a complaint form common to both agencies and in a manner that meets the requirements of both agencies, and then transfers those sole-jurisdiction charges to the other agency (the one with jurisdiction).

In cases of joint jurisdiction, both agencies accept and draft charges and then either investigate the charges or transfer them to the other agency by mutual agreement. Normally, the agency that initiates the investigation resolves the charge, except for those cases that involve jurisdictional problems or other special considerations. In each joint-jurisdiction case the investigating agency automatically files the case with the other agency for informational purposes only; throughout the "life" of the case, the lead agency periodically informs the silent agency of the case's status by means of a shared data bank and computerized case management system.

The Worksharing Agreement also lists which types of charges are the primary responsibility of the state and which are the primary responsibility of the EEOC. CCRD has primary responsibility for the following charges: 1) charges filed by a state commissioner, 2) charges alleging two or more bases, at least one of which is under the sole jurisdiction of the state, 3) charges against a respondent previously involved in a state investigation, and 4) charges originating outside of a 100 mile radius of Denver. EEOC has primary responsibility for the following: 1) charges filed by an EEOC commissioner, 2) charges involving terms and conditions of employment, 3) charges filed under the federal Equal Pay Act, 4) charges identified at an early point by EEOC as cases of a pattern of practice of employment discrimination filed under the federal Age Discrimination in Employment Act, and 5) charges referred to EEOC by other federal agencies.

The EEOC provides federal funds to the CCRD as part of this agreement. EEOC pays \$500 per case for 798 cases per year. The EEOC pays an additional \$50 per case for additional intake costs on 99 of those 798 cases. The EEOC pays nothing toward hearing costs.

With HUD. The CCRD has an annually-renewed agreement with HUD to coordinate fair housing activities and minimize duplication of efforts in joint-jurisdiction cases. Title VIII of the federal fair housing law requires that HUD refer all joint-jurisdiction housing charges to the nearest state agency that HUD has certified as "substantially equivalent" to federal fair housing laws, as is the case with Colorado. The agreement requires HUD to explain to all charging parties who initially present their charges to HUD the reasons for referral to CCRD, to help the parties file their charges (on a form common to both HUD and CCRD), and to send the charge to the CCRD in a timely manner. Again, in cases wherein HUD has sole jurisdiction or CCRD waives its right to initially process joint-jurisdiction charges, CCRD reciprocates by helping parties file their charges and sending the charges to HUD.

Federal Laws

The CCRD can waive its right to initially process joint jurisdiction charges in the following instances: 1) CCRD determines its total housing workload exceeds its capacity to process in a timely way, 2) CCRD does not expect to initiate investigation of a specific charge within 30 days, 3) the particular circumstances of a charge indicate that HUD would be better able to handle the charge, or 4) HUD has a particular interest in the charge because of its systemic nature or it involves HUD financial assistance. The agreement also establishes deadlines for investigative and other proceedings which, if not met, allow HUD to recall the complaint.

The agreement also includes joint staff training and research. HUD provides \$1700 per joint jurisdiction case.

United States Department of Education's Office for Civil Rights. By mutual agreement, this office and the CCRD regularly refer to one another those cases which fall within the other agency's jurisdiction. In addition, OCR and CCRD regularly work together to troubleshoot and mediate intergroup tensions between students, faculty, parents, et al., at middle schools and high schools in communities across the state.

Colorado Process

Complaint Procedure

A person, his or her attorney, the CCRC, a Commissioner, or the Attorney General may complete an intake form provided by the CCRD if they believe an incident of illegal discrimination has occurred. The incident must be filed within specific statutory time limits from the date of the alleged violation: six months for employment, one year for housing, and 60 days for public accommodations.

The completion of an intake form does not constitute the filing of a charge. The CCRD decides whether a charge alleging discrimination will be filed against a respondent based upon the information provided by the claimant during the intake process. CCRD may decline a charge for any of the following reasons: the charge is not jurisdictional, is not timely, or does not meet threshold criteria; the charging party has failed to provide reasonable comparative information; there is no identified harm/loss of compensation; the charge has already been filed with EEOC/HUD; or the complaint would be more appropriately handled by another agency. The complaint must be notarized, written charge on a standard form such as CCRD shares with EEOC or HUD.

Once a charge is filed, the Director of Compliance, with staff assistance, is responsible for assigning and investigating the complaint. The Director attempts to assign the complaint to the investigator who was present at the intake meeting, but work load and scheduling may prevent that particular assignment. The case is assigned to one of the 17 investigators within five (5) days after intake. The investigator then drafts the charge, contacts the charging party and has him or her sign the complaint.

Investigation Procedure

Each investigator receives an average of two (2) cases per week and is required to close approximately seven cases a month. Resources spent to complete a case vary depending upon the type of case (i.e. housing, employment, public accommodations). Generally, housing cases are more complicated and take more time than employment cases due to statutory requirements and the complexity of the law. However, the CCRD work load is primarily employment cases.

The investigator's job is to gather information from both parties to determine if there is "probable cause" to believe that discrimination occurred. Such information usually includes clarifying the proper name of the respondent and the legal structure of the business, asking the respondent to explain the actions that were taken (such as discharge or non-promotion), asking the respondent to give a specific and detailed sequence of events that led to the action that was taken, and asking the respondent to answer to the elements of the statute that set up a *prima facie* case of discrimination.

The investigator attempts to induce the complainant and the respondent to participate in an “early resolution conference (ERC).” The ERC is an informal, voluntary meeting held between the parties in the office of the CCRD with an investigator or senior staff member serving as a moderator. This voluntary conference offers both parties an opportunity to resolve the complainant’s allegations prior to an investigation through a mutually acceptable, confidential no-fault settlement agreement.

If the ERC fails or does not take place, the investigator reviews company records, interviews witnesses, and conducts on-site investigations to assess whether there is “probable cause” to believe that discrimination occurred. If the parties are uncooperative, the Division Director has statutory authority to subpoena records and compel testimony. This subpoena is enforceable in the district court for the district in which the discriminatory practice allegedly occurred.

The investigator allows approximately 30 days for the respondent to submit the information requested. Investigators have flexibility in setting time limits for responses, and they contact respondents more than once before deciding whether or not respondents are going to cooperate. The CCRD seldom has to actually resort to a subpoena to get information that the investigator needs for the investigation.

Once the investigator receives the respondent’s initial position statement and other requested information, the investigator contacts the complainant via a certified letter accompanied by a copy of the respondent’s initial position statement. In the letter, the investigator notifies the complainant that the case file is open for his or her review and requests that the complainant submit a rebuttal to the respondents statement within a specific period of time, usually two weeks.

Failure by the complainant to rebut the respondent’s position statement may result in CCRD’s dismissing the case due either to the complainant’s failure to cooperate or failure to meet the burden of proof that the respondent’s position was a pretext for discrimination. If the claim is one wherein joint jurisdiction exists, the complainant will receive a second letter - this one from the corresponding federal agency warning the complainant to contact the CCRD within 33 days and to maintain contact, or the case will be closed.

If the Director finds “probable cause” to believe that discrimination did occur, the CCRD notifies both parties and attempts to engage them in conciliation process. In contrast to the early resolution conference, the conciliation process is not voluntary.

If efforts to conciliate fail, then the complainant may appeal to the Commission, who may set the case for hearing before an administrative law judge (ALJ) at the expense of the state. At this stage of the process, there are strict time limits specified in the agency’s operating statutes: a notice of hearing must be issued within 180 days of the filing of the charge, and the hearing must begin within 120 days following the notice of hearing. (Time extensions totaling 180 days - 90 days for each party’s benefit - may be granted by the CCRC, a Commissioner, or an ALJ at either party’s request, for good cause shown.)

If the CCRC, with the advice from the Attorney General’s Office, does not consider the case to be hearingworthy based on several key criteria, the Division issues the complainant a

“right to sue” letter and closes the case. Likewise, if the case is dismissed for any reason or if the statutory time limit runs out, the charging party may seek relief by filing within 90 days a civil action in the district court for the district in which the discriminatory action occurred. Any final order by the CCRC may be appealed in the Colorado Court of Appeals; and if a respondent does not comply with an order of the CCRC, the Commission may seek a decree from the district court to enforce the order.

The CCRC sets an average of 4-10 cases per year for hearing before an administrative law judge; many of them are settled prior to the actual hearing. Approximately 35% of all “probable cause” cases are resolved through conciliation. During the conciliation process the CCRD represents the state’s interests as well as the complainant’s, and these interests differ somewhat in scope; the difference could be described as “macro” versus “micro.” For example, concurrent with compliance activities the state may see ways to correct systemic discrimination by education, notification, and awareness-building, while aggrieved individuals usually want a specific respondent to cease the specific discriminatory practice(s) that the complainant experienced. Complainants may also seek monetary relief, such as back or differential pay, a promotion, etc.

If the case is dismissed or the statutory time limit for resolving the charge expires, the charging party may seek relief by filing a civil action within 90 days in the district court for the district in which the alleged discriminatory or unfair practice occurred. Final orders of the CCRC may be appealed in the Colorado Court of Appeals. If a respondent does not comply with an order of the CCRC, then the CCRC may obtain a decree from the district court to enforce the order.

As previously stated, a complaint of alleged discrimination also may be filed with the United States Equal Employment Opportunity Commission (EEOC) or the United States Department of Housing and Urban Development (HUD). The CCRC has cooperative agreements with the EEOC and HUD which prevent duplication in filing and processing of charges where there is common jurisdiction.

Enforcement Statistics

Over the last four years, the CCRD/CCRC annually received between 1200 and 1300 cases of alleged discrimination and over 14,000 inquiries. The CCRD/CCRC also closed between 1100 and 1400 cases per year during that same period. The following two tables show the types of cases filed with the CCRD for FY 1994-95 through FY 1997-98, and the outcomes of cases closed by the CCRD/CCRC for FY 1994-95 through FY 1997-98.

Colorado Process

Table 4
New Cases by Group and Type for FY1994-95 through FY1997-98

Basis	Employment				Housing				Public Accommodation				Total				Percent of Total			
	97-98	96-97	95-96	94-95	97-98	96-97	95-96	94-95	97-98	96-97	95-96	94-95	97-98	96-97	95-96	94-95	97-98	96-97	95-96	94-95
Race/color	143	114	145	121	18	24	23	27	32	17	9	1	193	155	177	179	15%	12%	14%	15%
National Origin/ Ancestry	77	106	85	73	14	15	12	10	8	5	16	15	99	126	113	98	8%	10%	9%	8%
Creed/ Religion	9	13	13	7	1	2	2	0	0	2	0	0	10	17	15	7	1%	1%	1%	1%
Sex	176	201	189	202	6	1	2	5	1	2	0	1	183	204	191	208	14%	16%	15%	17%
Age	108	95	93	94	0	0	0	0	0	0	0	0	108	95	93	91	8%	7%	7%	8%
Disability																				
Physical	152	166	137	112	22	24	20	22	6	13	10	4	180	203	167	138	14%	16%	13%	11%
Mental	23	29	11	13	2	10	11	3	1	0	0	0	26	39	22	16	2%	3%	2%	1%
Familial Status	0	0	0	1	27	8	10	13	0	0	1	0	27	8	11	14	2%	1%	1%	1%
Marital Status	0	0	0	0	0	1	2	3	2	0	0	0	2	1	2	3	0%	0%	0%	0%
Retaliation	25	22	37	37	2	2	1	1	2	0	1	0	29	24	39	38	2%	2%	3%	3%
Association	4	1	2	2	2	1	2	1	0	0	1	1	6	2	5	4	0%	0%	0%	0%
Multiple & Other	380	375	411	345	40	33	48	60	7	11	13	16	427	419	472	421	33%	32%	36%	35%
Total	1097	1122	1123	1004	134	121	133	145	59	50	51	68	1290	1293	1307	1217				

Source: The Colorado Civil Rights Division

Table 5
Cases Closed by Type of Closure
FY 1994-95 through FY 1997-98

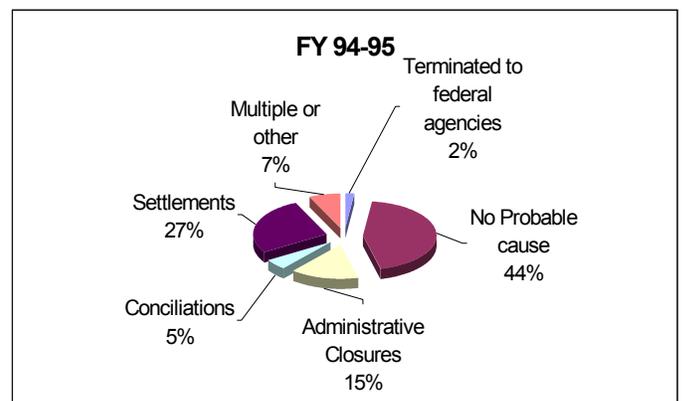
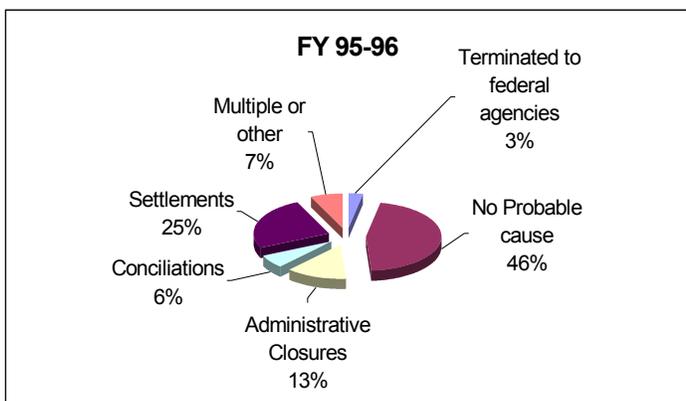
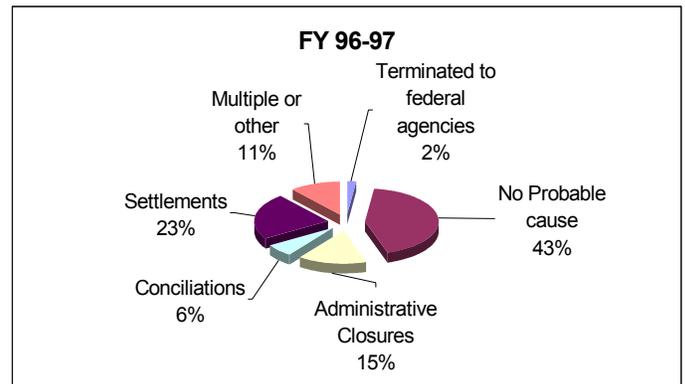
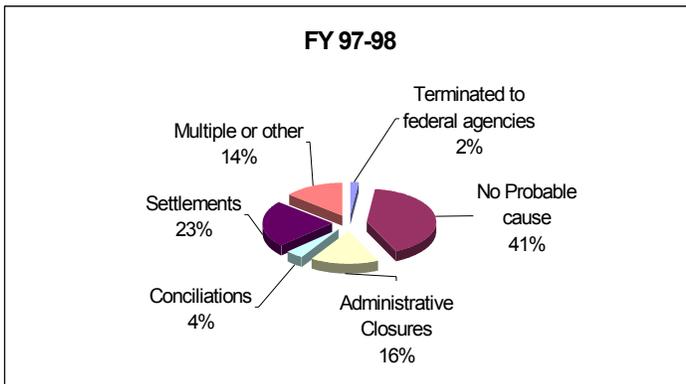
Type of Closure	FY 1997-98		FY 1996-97		FY 1995-96		FY 1994-95	
	No of Cases	% of All FY Cases	No of Cases	% of All FY Cases	No of Cases	% of All FY Cases	No of Cases	% of All FY Cases
Terminated to federal agencies:								
EEOC	17		19		22		13	
HUD	12		11		11		13	
Total	29	2%	30	2%	33	3%	26	2%
No Probable cause								
Dismissed, no PC	563		539		596		517	
ERP, dismissed, no PC	0		0		8		0	
Total	563	41%	539	43%	604	46%	517	44%
Administrative Closures:								
Admin. closures	18		9		7		13	
ERP, admin. closure	0		0		1			
Failure to cooperate	73		89		78		100	
Unable to locate	19		12		8		16	
Withdrawn without settlement	109		85		68		50	
Lost jurisdiction	3		1		3		3	
Total	222	16%	196	15%	163	13%	182	15%
Conciliations:								
Successful	16		27		31		30	
Unsuccessful	39		49		49		32	
Total	55	4%	76	6%	80	6%	62	5%
Settlements:								
Withdrawn with settlement	87		82		116		97	
No-fault settlement agreement	130		80		112		96	
ERP, no-fault settlement agreement	89		120		95		116	
Settlement approved by Commission	6		5		6		5	
Total	312	23%	287	23%	315	25%	314	27%
Multiple or other:								
Requested right to sue	186		120		97		80	
Final dismissal by CCRC	1		12		0		3	
Total	187	14%	132	11%	97	7%	83	7%
TOTAL FY CASES	1368	100%	1260	100%	1308	100%	1184	100%

Source: Colorado Civil Rights Division/Commission

Table 4 and Table 5 show that the types of cases filed and the number and types of closures over the past four years have not varied significantly. Please note, however, that when closure data from FY1994-95 is compared with closure data from FY1997-98 the percentage of “requests for right to sue” closures has increased substantially. In FY 1994-95 seven percent (7%) of closures resulted in “requested right to sue” while in FY 1997-98, 14 percent (14%) of closures resulted in “requested right to sue.” The CCRD attributes this increase to the difference in remedies available to cases resolved through the state's administrative process and the remedies available to cases resolved in federal court, i.e., punitive damages, attorney’s fees and compensatory damages.

Table 4 on page 18 shows the number of cases filed and the reasons for filing for the past four years. While some individuals may hold that the CCRC mainly protects persons discriminated against because of race, a review of the cases filed does not support this argument. Of the 1097 cases of alleged discrimination filed with the CCRD in 1997-98, 15 percent were based on race, color, ancestry or national origin. An additional 52 percent of cases were filed for other reasons such as disability, sex and age, and 33 percent of cases were filed for multiple or other reasons.

A condensed view of Table 5 shows percentages of case closures by type as follows:



Source: Colorado Civil Rights Division/Commission

Should the Division be Continued?

Criticisms of the CCRD/CCRC

Only a fraction of the respondents contacted during this review recommended that the CCRD and CCRC be allowed to sunset. The argument for termination states that there is significant overlap between state regulation and federal regulation. Most plaintiffs, it is argued, are seeking the right-to-sue letter, and the state process serves as a hurdle or hoop to jump through before filing in Federal court.

Specifically the criticism is that an individual who files a complaint has “two bites of the apple” against a respondent. The first bite is an action through the administrative process and the second is a lawsuit filed in district court, regardless of the administrative outcome. For example, an employee may file a charge of discriminatory practice against an employer with the CCRD. The CCRD will investigate the charge requesting specific information from the employer. After a finding by the CCRD of cause or no probable cause, the employee may then file a lawsuit for the same cause of action in federal district court. This criticism is compounded by the allegation that an increasing number of charges filed with the CCRD still end up being litigated in court.

Arguments for Continuation of the CCRD/CCRC

Proponents of state regulation counter that while some plaintiffs wish to bypass state remedies and file suit in federal court, this is not true of the majority of cases. Many charging parties do not have the resources to retain counsel and pursue legal remedies, especially if they have been fired and are looking for employment.

Proponents of continuation also cite the slow response of the federal (EEOC and HUD) process and the fact that the CCRD/CCRC are accountable to the General Assembly. The CCRD/CCRC proponents further argue that some persons are not covered by federal regulations even if the plaintiffs could hire an attorney. The primary example offered is the state's jurisdiction over employers with fewer than 15 employees for discrimination based on disability, age, race, color, creed, sex, national origin and ancestry.

Finally, one must consider the functions and duties of the CCRD/CCRC that are unique to the state program. For instance, research and education activities of the CCRD/CCRC would not be taken over by the federal government should the CCRD/CCRC be allowed to sunset.

The statutory criteria that guides sunset reviews states that the burden for proving the need for continuation of an agency falls on the agency. In response to this requirement, the Director of the Division of Civil Rights provided a response via memoranda dated July 14, 1998. Excerpts from this memoranda are included in this report as Appendix B on page 31.

Statutory Recommendations

Recommendations 1. *The General Assembly should continue the functions and responsibilities of the CCRD/CCRC and set a new sunset date of 2009.*

The Colorado Civil Rights Commission and the Colorado Civil Rights Division should be continued with a new sunset date of 2009. Colorado was one of the first states in the country to create a civil rights agency. This was done several years before the creation of a federal civil rights agency. The purpose of the CCRD was to provide victims of discrimination an opportunity for corrective action. The CCRD provides the first attempt at resolving a dispute and is designed to reduce the impact on the federal court system by attempting to resolve the dispute administratively.

Each year approximately 1300 charges of discrimination are filed with the CCRD. The overwhelming majority of charges filed (over 85%) fall within employment discrimination. Approximately 10% of the CCRD cases are housing cases and the rest consist of public accommodation cases.

An examination of new charges filed in FY 97-98 identify that approximately 22% of all cases filed with the CCRD fall within their sole jurisdiction (103 employment, 19 state personnel, 124 housing, and 59 public accommodation). If the CCRD/CCRC were to sunset, these cases would either go directly to the court system or not be filed due to limited resources and knowledge of the claimants.

The Office of Policy and Research (OPR) conducted a survey of approximately 300 civil rights organizations, trade associations, community groups, and law firms to determine the effectiveness of the CCRD and CCRC. OPR received approximately 60 responses, the large majority providing favorable comments of both the agency and commission (See Appendix C for copy of survey). Additionally OPR contacted plaintiff and defense attorneys to get their perspective of the division and commission as many complaints involve legal counsel.

As mentioned previously, only a very small minority of those contacted stated that the CCRD/CCRC should be terminated. Those remarks were based largely on perceived overlap with federal programs and not on performance at the state agency.

Should the Division be Continued?

Recommendation 2. The General Assembly should amend Section 24-34-405, C.R.S., to equate employment discrimination remedies awarded by the CCRC with federal remedies so that state remedies include punitive damages, attorney's fees and compensatory damages.

Current Colorado law provides for the CCRC to award remedies of back pay and reinstatement of a job in cases of employment discrimination. At the federal level, the Civil Rights Act of 1991 provides for federal remedies to include the awarding of compensatory damages, attorney's fees and punitive damages in cases of employment discrimination. Since the passage by Congress of the aforementioned Civil Rights Act of 1991, a significant gap exists between those remedies afforded victims of discrimination under federal law and remedies to victims protected by Colorado law. As a result of such disparity between remedies, the CCRC has noticed a significant increase in the "requested right to sue" letters issued to claimants.

In Fiscal Year 1992-93 less than one percent of cases filed with the CCRC resulted in a "requested right to sue" compared with 14 percent (14%) of cases in FY 1997-98. The CCRC believes this increase is directly related to the disparity between the remedies available through the state and federal government. During interviews conducted for this review, some attorneys involved in employment law state that Colorado's fair employment practices law is ineffective and that the administrative procedure of the Civil Rights Commission is merely a formality to be bypassed. If the CCRC possessed the statutory authority to award punitive damages, attorney's fees and compensatory damages, it is likely that more claimants would be satisfied with the administrative process thereby avoiding expensive and time-consuming court trials.

Because Colorado citizens normally initiate employment discrimination complaints with the state Civil Rights Commission, the inability of the State to award remedies comparable to the federal government has resulted in a significant increase in the request for "right to sue" letters from the State and filing of employment discrimination cases in federal court.

By comparison, since 1990 the State's fair Housing Law has contained provisions for compensatory and punitive damages. The result is that almost all Fair Housing complaints filed in the State of Colorado are handled at the local level by the Colorado Civil Rights Commission rather than by the federal Department of Housing and Urban Development.

If equivalent remedies are available to victims of discrimination at both the state and federal level, potential victims will have true election between agencies. Since the CCRD historically handles complaints far more efficiently than the federal agency, the trend toward seeking remedies in the courts rather than through the administrative process will clearly be reversed. Past experience with the State's Fair Housing Law has confirmed that having substantially equivalent remedies at the state level provides a far more satisfactory resolution for all parties who would much rather have their civil rights complaints resolved at the state level than at the federal level.

Cases handled at the administrative level are resolved far more efficiently than the same cases handled in the courts. Quicker resolution reduces significantly the potential liability to respondents. Only the true victims of discrimination are compensated for their losses. Only willful violators of the law are punished with fines at a level designed to prevent future discriminatory practices. Since the number of violations of the law will not increase (but may actually decrease with stronger remedies) the fiscal impact on the agency is expected to be negligible. As part of this review, contact was made with California where the state agency has similar powers to these contained in this recommendation. Agency spokespersons reported no significant increase in agency workload immediately after the implementation nor presently. No increase in appropriation for hearings is anticipated, only continued level funding.

Recommendation 3. *The General Assembly should amend Section 24-34-402(1)(a), C.R.S., to protect persons from harassment based on their sex, race, ethnicity, religion, age, or disability in cases that do not involve an economic detriment.*

Amending §24-34-402(1)(a), C.R.S., as indicated will allow the CCRC to amend the rules (3 CCR) defining sexual, ethnic, racial, religious, age and disability discrimination. This will enable the CCRD to take action in cases where persons subjected to discriminatory working conditions have not suffered financial harm (i.e., discriminatory treatment or harassment without threat of discharge, reduction of hours, denial of raise or promotion, etc.).

This would allow people working for small organizations (employers of 14 or fewer employees) to receive equal protection of the law without filing a costly court action, and would similarly avail small employers of the administrative process.

Because EEOC lacks jurisdiction over employers of 14 or fewer employees, Coloradans who work for small organizations fall under the sole jurisdiction of the CCRD/CCRC. The state statutes to which CCRD/CCRC is bound, prohibit discrimination in matters of compensation only and are silent with regard to discriminatory working conditions. This means that employees who work for small companies and are subjected to discriminatory working conditions or a hostile work environment must either quit their job or be fired before they can seek administrative remedy.

Federal laws, which cover employers of 15 or more, define sexual, ethnic, and racial discrimination and harassment that may or may not have resulted in an economic detriment to the one being discriminated against or harassed. Amending the state law would give employees of small companies equal protection under the law and presumably reduce the number of civil actions that smaller employers are forced to defend themselves against.

Suggested wording for amendment:

24-34-402. Discriminatory or unfair employment practices. (1) It shall be a discriminatory or unfair employment practice:

- (a) For an employer to refuse to hire, to discharge, to promote or demote, or to discriminate in MATTERS PERTINENT TO EMPLOYMENT against any person, otherwise qualified, because of disability, race, creed, color, sex, age, national origin, or ancestry; (et seq.)

Recommendation 4. The General Assembly should amend Section 24-34-305, C.R.S., to include crisis intervention for the purpose of mediation, using dispute resolution techniques, as a power and duty of the Colorado Civil Rights Commission.

Section 24-34-305(2)(8), C.R.S., states that the CCRD/CCRC has the power and duty "to cooperate, within the limits of any appropriations..., with other agencies or organizations, both public and private, whose purposes are consistent with those of parts 3 to 7 of this article, in the planning and conducting of education programs designed to eliminate racial, religious, cultural, age, and intergroup tensions."

In the past, the CCRD/CCRC has assisted the U.S. Department of Justice, the U.S. Department of Education, and the Colorado Department of Education in defusing racial, ethnic and intergroup tension. When these agencies are presented with a particular situation that is potentially explosive due to racial or ethnic tensions, education or training may not be the best tool to defuse the situation. Therefore, the CCRD/CCRC has been involved in utilizing a mediation tool identified as "Alternative Dispute Resolution" (ADR).

The CCRD/CCRC believes that direct statutory authority to use ADR would strengthen their ability to defuse these types of conflicts. The ability to provide ADR services would also enhance the public safety mission of government while saving tax dollars by defusing intergroup conflicts before violence occurs.

Over the past several years, the CCRD has been involved in using ADR as a tool to resolve intergroup conflict around the state. The Commission has responded to numerous requests to intervene in community crises and mediate between the parties in conflict. The Commission's services have been put to good use in a variety of sites and situations, including Denver area high schools and middle schools, shopping malls, skating rinks, an urban mosque, a small community in Big Thompson Canyon, and small towns on both the eastern plains and the south central valley of Colorado. In each of the cases, intervention by the Commission has contributed to reducing hostilities before they erupted into violence and applying dispute-resolution techniques to help the parties work toward a mutually acceptable solution.

This amendment would strengthen the preventive component of the mandate and mission of the commission, which is to eliminate illegal discrimination through preventive measures and through the enforcement of Colorado's antidiscrimination laws by specifically adding dispute resolution as a means of eliminating intergroup tensions and preventing illegal discrimination.

The present language of §24-34-305, C.R.S., authorizes the CCRC, regarding intergroup tensions, only to *educate*, not to intervene and mediate. But training is neither viable nor appropriate when hostilities have become heightened to the point of potential violence. In the past two years Colorado Civil Rights Commission/Division staff responded to more than 90 calls per year for intervention in community crises that stemmed from racial, religious, or ethnic bias.

Apart from the CCRC, there is no unit or organization in the public or private sector for groups or individuals to turn to for help in resolving intergroup conflicts. Law enforcement agencies have no authority to take action until the law has been violated. But when a conflict escalates to that level, the cost of curing it increases exponentially, not only in terms of staggering legal fees but in terms of the impact on human lives, the loss of general good will and cooperation among citizens, and damage to Colorado's nationwide reputation.

Recommendation 5. The General Assembly should amend C.R.S. 24-34-502 (7) (b) (I through III) to conform the criteria for “housing for older persons” to the same criteria in the federal Fair Housing Act.

In 1990, Colorado amended its fair housing law to become “substantially equivalent” to federal law. One of the amendments prohibited discrimination in housing on the basis of “familial status” (families with dependent children), with the exception of housing intended specifically for older persons. In accordance with the federal law, Colorado law had a provision exempting housing complexes wherein 80% of the units had one person over the age of 55 and where the housing complex provided “significant facilities and services specifically designed to meet the physical or social needs of older persons.”

HUD initially had regulations to implement and interpret the words “significant facilities and services.” However, because of the difficulty in interpreting the regulations and the housing industry’s frustration with the resulting uncertainty, Congress repealed that section of the federal Fair Housing Act in 1995 and deleted the corresponding regulations. But the requirement for “significant facilities and services” was never removed from Colorado’s statutes; it remains on the books without the benefit of regulations to interpret it.

Colorado housing providers and the public would be better served if both the federal and state statutory criteria for exemption were once again substantially equivalent. Then the planners, providers and managers of housing for seniors would not be faced with the dilemma of which law—federal or state—to comply with and how to comply with it in the absence of regulations that interpret that segment of the law.

Colorado’s fair housing statutes should be changed to reflect all of the revised criteria for designation as “housing for older persons” now contained in the federal Fair Housing Act, which requires that:

-
-
- (a) the housing facility or community publish and adhere to policies and procedures that demonstrate that the housing is intended for older persons;
 - (b) the housing facility provide reliable verification of occupancy, ages of occupants, etc.; and
 - (c) persons (including real estate agents, etc.) would not be liable for monetary damages if such persons reasonably relied, in good faith, on the assertion by others that the housing met the criteria for exemption.

Suggested wording for §24-34-502(7)(b)(I through III), C.R.S.:

(7) (a) Nothing in this section shall limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor shall any provision in this section regarding familial status apply with respect to housing for older persons.

(b) As used in this subsection (7), "housing for older persons" means housing provided under any state or federal program that the division determines is specifically designed and operated to assist older persons, or is intended for, and solely occupied by, persons sixty-two years of age or older, or is intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing intended and operated for occupancy by one person fifty-five years of age or older per unit qualifies as housing for older persons under this subsection (7), the division shall require the following:

(I) That at least eighty percent of the OCCUPIED units are occupied by at least one person WHO IS fifty-five years of age or older ; and

(II) THAT THE HOUSING FACILITY OR COMMUNITY PUBLISHES AND ADHERES TO POLICIES AND PROCEDURES THAT DEMONSTRATE THE INTENT REQUIRED UNDER THIS SUBSECTION (7) (b).

(III) THAT THE HOUSING FACILITY OR COMMUNITY COMPLIES WITH RULES ISSUED BY THE COMMISSION FOR VERIFICATION OF OCCUPANCY, WHICH SHALL:

(A) PROVIDE FOR VERIFICATION BY RELIABLE SURVEYS AND AFFIDAVITS;
AND

(B) INCLUDE EXAMPLES OF THE TYPES OF POLICIES AND PROCEDURES RELEVANT TO A DETERMINATION OF SUCH COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (II). SUCH SURVEYS AND AFFIDAVITS SHALL BE ADMISSABLE IN ADMINISTRATIVE AND JUDICIAL PROCEEDINGS FOR THE PURPOSE OF SUCH VERIFICATION.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of March 12, 1989, who do not meet the age requirements of paragraph (b) of this subsection (7) if the new occupants of such housing meet the age requirements of paragraph (b) of this subsection (7) or, by reason of unoccupied units, if such units are reserved for occupancy by persons who meet the age requirements of paragraph (b) of this subsection (7).

(d) (A) A PERSON SHALL NOT BE HELD PERSONALLY LIABLE FOR MONETARY DAMAGES FOR A VIOLATION OF THIS PART 5 IF SUCH PERSON REASONABLY RELIED, IN GOOD FAITH, ON THE APPLICATION OF THE EXEMPTION UNDER THIS SUBSECTION RELATING TO HOUSING FOR OLDER PERSONS.

(B) FOR THE PURPOSES OF THIS SUBPARAGRAPH (c), A PERSON MAY ONLY SHOW GOOD FAITH RELIANCE ON THE APPLICATION OF THE EXEMPTION BY SHOWING THAT:

(I) SUCH PERSON HAS NO ACTUAL KNOWLEDGE THAT THE FACILITY OR COMMUNITY IS NOT, OR WILL NOT BE, ELIGIBLE FOR SUCH EXEMPTION; AND

(II) THE FACILITY OR COMMUNITY HAS STATED FORMALLY, IN WRITING, THAT THE FACILITY OR COMMUNITY COMPLIES WITH THE REQUIREMENTS FOR SUCH EXEMPTION.

Administrative Recommendation

Administrative Recommendation 1. The CCRC should continue to be active in meeting with citizen and business groups and report to the General Assembly civil rights issues that are identified as a result of these meetings.

Recently the CCRC held six “town hall” meetings around the state: Lakewood, Aurora, Pueblo, Grand Junction, Colorado Springs and Greeley. Members of each community were invited to meet with the CCRC to help identify concerns of Colorado citizens in the area of civil rights. OPR attended several of these meeting and concluded that this type of forum is beneficial to citizens.

The CCRC should also meet with members of the General Assembly to help legislators identify the concerns and needs of Colorado citizens in the area of civil rights.

Appendices

Appendix A - Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

**Appendix B - Response of the Director of the Division of Civil Rights regarding
Continuation of the CCRD and CCRC**

(Excerpts from July 14, 1998 Memoranda)

The Colorado Civil Rights Division/Commission (CCRD) exists to carry out the Constitutional guarantee of **equal treatment under the law** guaranteed to all citizens by both the United States Constitution (Amendment XIV) and the Colorado Constitution (Article II, Sections 3, 4, 25, 26, 27, and 29. See also Article IX, Section 8; and Article XII, Section 13.).

The CCRD, initially created in 1957, has been re-enacted twice by the Colorado Legislature pursuant to provisions of the Sunset Law, once in 1979 and again in 1989. On both occasions there was overwhelming, bi-partisan support for the continuation of CCRD. The re-enactment of 1979 established the Colorado Civil Rights Commission as a separate entity within the Division. Commissioners are mandated by statute to enact rules and regulations for the enforcement of civil rights laws; to conduct hearings on the character, causes and extent of discriminatory practices in Colorado; to report to and advise the Governor and General Assembly; and to review appeals of cases dismissed by the Division Director.

These functions of the Commission are critical to the continued operation of the Division. The seven Commissioners are ordinary citizens of Colorado who represent business, government and the community of persons likely to experience discrimination. They provide a balanced perspective to the administration of civil rights laws and add significantly to the climate of fairness that must exist at all times within the Division.

The CCRD provides an efficient and inexpensive administrative alternative to expensive and time-consuming litigation. If the 1300 cases filed annually with the CCRD had been litigated, it is estimated that the costs to both the court system and to the parties to such complaints would have increased more than 10-fold. Moreover, the time required to pursue such matters through litigation would have expanded exponentially due to the clogging of the court system. The cost to the state to enlarge the court system to process an additional 1300 cases annually would far exceed the cost of continuing the Division. In fiscal year 1998, the CCRD obtained more than \$2,250,000 in remedies on behalf of claimants. The General Fund appropriation for the CCRD during that same period was \$1,774,845.

It is axiomatic that government closest to the people is the best form of government. Eliminating the CCRD would have the effect of significantly reducing the number of Colorado citizens eligible to file employment discrimination claims. (EEOC has no jurisdiction over employers of less than 15 employees.) Colorado citizens would then be forced to resort exclusively to federal remedies for redress of all discrimination claims. The notoriously slow and bureaucratic federal process would discourage victims of discrimination from seeking redress and would concede to the federal government exclusive jurisdiction over issues which, by their nature, should be handled at a local level. A significant number of Colorado citizens who are now protected from discrimination only by state law would be left with no redress whatsoever. Especially excluded would be those citizens outside the Denver area who now have access to CCRD offices in Colorado Springs, Pueblo, Greeley and Grand Junction. In FY 1998, 532 of the agency's 1286 new cases were filed in those regional offices.

Of those cases that could have been filed with federal agencies (HUD and EEOC) but instead were filed with the CCRD during this last year, all have been assigned and many have already been fully processed by the state agency. By contrast, the EEOC is still laboring under a severe backlog and those same cases would have been either dismissed without an investigation or put on a shelf to age for a year or more before assignment to an investigator. The Denver regional office of HUD is struggling to stay abreast of cases filed in Montana, Wyoming and North and South Dakota where equivalent Fair Housing Laws do not exist. Adding Colorado's Fair Housing caseload of over 130 cases annually to HUD's workload would effectively deny equal protection from housing discrimination to Colorado citizens.

On the other hand, the CCRD takes considerable care to assure that there is no duplication of effort between the state and federal agencies. Specific work sharing arrangements with EEOC and HUD provide for a system of dual-filing and referrals to assure that no single case is processed by both state and federal agencies. Sharing of the results of our case processing with our federal counterparts allows them to issue findings based on the outcome of state investigations and to close cases based on settlements negotiated by CCRD.

The CCRD is the only state agency specifically empowered to research the causes and the extent of discrimination and intergroup conflict. Such research is reported to the Governor, the General assembly and to private enterprise to enable appropriate action and legislation providing solutions to the problems generated by interactions within a diverse society. That society is not only growing within the state but is becoming increasingly more diverse.

The CCRD is the only state agency empowered to conduct educational programs throughout the state whose purpose is to reduce the causes and incidences of discriminatory behavior. Included among those who have received such training are businessmen and women, housing providers, realtors, architects, engineers and attorneys. The general public is provided a broad cross section of lectures and educational presentations to assist them to develop an attitude of tolerance and intergroup understanding. CCRD staff are available to address civil rights issues to students, advocacy groups, service clubs, and many others.

The CCRD is the only agency of state government specifically empowered to intervene with other public and private sector agencies to formulate programs, which address community intergroup tensions. Mediators assigned by the Division have been instrumental in resolving community disputes in all areas of the state, from Alamosa to Evergreen and from Longmont to Lamar. This community intervention function of the Division provides a meaningful and effective tool, **alternative dispute resolution**, to reduce intergroup tensions and prevent community violence.

These are but a few of the *general* consequences of the elimination of the CCRD. Each year, 1300 separate complaints are filed representing 1300 *individual lives* that have been changed for the worse by the action of an employer, housing provider or vendor. This number also represents 1300 people who have placed their trust in a system of law to provide them with a solution to their problem. Elimination of the CCRD would send a message to those 1300 citizens that government does not give a damn. It would indeed be a sad day if this scenario should ever come to pass.

Appendix C - Colorado Civil Rights Statute

24-34-301. Definitions. As used in parts 3 to 7 of this article, unless the context otherwise requires:

(1) "Age" means a chronological age of at least forty years but less than seventy years.

(1.5) "Commission" means the Colorado civil rights commission created by section 24-34-303.

(1.6) "Commissioner" means a member of the Colorado civil rights commission.

(2) "Director" means the director of the Colorado civil rights division, which office is created by section 24-34-302.

(2.5) (a) "Disability" means a physical impairment which substantially limits one or more of a person's major life activities and includes a record of such an impairment and being regarded as having such an impairment.

(b) (I) On and after July 1, 1990, as to part 5 of this article, "disability" shall also include such a person who has a mental impairment, but such term does not include any person currently involved in the illegal use of or addiction to a controlled substance.

(II) On and after July 1, 1992, as to parts 4, 6, and 7 of this article, "disability" shall also include such a person who has a mental impairment.

(III) The term "mental impairment" as used in subparagraphs (I) and (II) of this paragraph (b) shall mean any mental or psychological disorder such as developmental disability, organic brain syndrome, mental illness, or specific learning disabilities.

(3) "Division" means the Colorado civil rights division, created by section 24-34-302.

(4) (Deleted by amendment, L. 93, p. 1655, § 59, effective July 1, 1993.)

(5) "Person" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the state of Colorado, and all political subdivisions and agencies thereof.

(6) "Respondent" means any person, agency, organization, or other entity against whom a charge is filed pursuant to any of the provisions of parts 3 to 7 of this article.

24-34-302. Civil rights division - director. There is hereby created within the department of regulatory agencies a division of state government to be known and designated as the Colorado civil rights division, the head of which shall be the director of the Colorado civil rights division, which office is hereby created. The director shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution, and the executive director shall give good faith consideration to the recommendations of the commission prior to making such appointment. The director shall appoint such investigators and other personnel as may be necessary to carry out the functions and duties of the division.

24-34-303. Civil rights commission - membership. There is hereby created, within the division, the Colorado civil rights commission. The commission shall consist of seven members, who shall be appointed by the governor, with the consent of the senate, for terms of four years; except that, of the first members appointed, two shall be appointed for terms of two years and two shall be appointed for terms of three years. In making the first two appointments to the commission on or after July 1, 1981, whether such appointments are for a full term or to fill a vacancy, the governor shall appoint one member to represent the business community and one member to represent state or local government entities. In making the next two appointments to the commission, whether such appointments are for a full term or to fill a vacancy, the governor shall appoint one member to represent small business and one member to represent state or local government entities. The governor shall make all subsequent appointments in such a manner that there are at all times two members of the commission representing the business community, at least one of which shall be a representative of small business, two members of the commission representing state or local government entities, and three members of the commission from the community at large. The membership of the commission shall at all times be comprised of at least four members who are members of groups of people who have been or who might be discriminated against because of disability, race, creed, color, sex, national origin, or ancestry as defined in section 24-34-402 or because of marital status, religion, or age. Appointments shall be made to provide geographical area representation insofar as may be practicable, and no more than four members shall belong to the same political party. Vacancies shall be filled by the governor by appointment, with the consent of the senate, and the term of a commissioner so appointed shall be for the unexpired part of the term for which the commissioner is appointed. Any commissioner may be removed from office by the governor for misconduct, incompetence, or neglect of duty. Commissioners shall receive a per diem allowance and shall be reimbursed for actual and necessary expenses incurred by them while on official commission business, as provided in section 24-34-102 (13). The commission may adopt, amend, or rescind rules for governing its meetings, and four commissioners shall constitute a quorum.

24-34-304. Division and commission subject to termination - repeal of part. (1) The provisions of section 24-34-104, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division and the commission created by this part 3.

(2) This part 3 is repealed, effective July 1, 1999. Prior to such repeal, the functions of the division and commission shall be reviewed as provided for in section 24-34-104.

24-34-305. Powers and duties of commission. (1) The commission has the following powers and duties:

(a) To adopt, publish, amend, and rescind rules and regulations, in accordance with the provisions of section 24-4-103, which are consistent with and for the implementation of parts 3 to 7 of this article. All such rules adopted or amended on or after July 1, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II).

(b) To receive, investigate, and pass upon charges alleging unfair or discriminatory practices in violation of parts 4 to 7 of this article;

(c) To investigate and study the existence, character, causes, and extent of unfair or discriminatory practices as defined in parts 4 to 7 of this article and to formulate plans for the elimination thereof by educational or other means;

(d) (I) To hold hearings upon any complaint issued against a respondent pursuant to section 24-34-306; to subpoena witnesses and compel their attendance; to administer oaths and take the testimony of any person under oath; and to compel such respondent to produce for examination any books and papers relating to any matter involved in such complaint. Such hearings may be held by the commission itself, or by any commissioner, or by any administrative law judge appointed by the commission pursuant to part 10 of article 30 of this title, subject to appropriations for such administrative law judges made to the department of personnel; except that, if no administrative law judge is made available within the time limitations set forth in section 24-34-306 (11), the governor shall appoint an administrative law judge at the request of the commission, and such administrative law judge shall be paid out of moneys appropriated to the division. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena in the premises, and the court shall in a proper case issue its subpoena. Refusal to obey such subpoena shall be punishable as contempt.

(II) No person may be excused from attending and testifying or from producing records, correspondence, documents, or other evidence in obedience to a subpoena in any such matter on the ground that the evidence or the testimony required of him may tend to incriminate him or subject him to any penalty or forfeiture. However, no testimony or other information compelled under order from the commission, or other information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except a prosecution and punishment for perjury or false statement committed in so testifying.

(e) To issue such publications and reports of investigations and research as in its judgment will tend to promote goodwill among the various racial, religious, age, and ethnic groups of the state and which will tend to minimize or eliminate discriminatory or unfair practices as specified by parts 3 to 7 of this article. Publications of the commission circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(f) To prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor and the general assembly for the efficient discharge of all responsibilities assigned by law or directive to the commission;

(g) To recommend policies to the governor and to submit recommendations to persons, agencies, organizations, and other entities in the private sector to effectuate such policies;

(h) To make recommendations to the general assembly for such further legislation concerning discrimination as it may deem necessary and desirable;

(i) To cooperate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of parts 3 to 7 of this article, in the planning and conducting of educational programs designed to eliminate racial, religious, cultural, age, and intergroup tensions;

(j) To adopt an official seal.

(2) Any provision of this article to the contrary notwithstanding, no person shall be required to alter, modify, or purchase any building, structure, or equipment or incur any additional expense which would not otherwise be incurred in order to comply with parts 3, 4, 6, and 7 of this article.

(3) In exercising the powers and performing the duties and functions under parts 3 to 7 of this article, the commission, the division, and the director shall presume that the conduct of any respondent is not unfair or discriminatory until proven otherwise.

(4) Whether by rule, regulation, or other action or whether as a remedy for violation of any provision of parts 3 to 7 of this article or otherwise, the commission shall not prescribe or require the implementation of a quota system.

24-34-306. Charge - complaint - hearing - procedure - exhaustion of administrative remedies - repeal.

(1) Any person claiming to be aggrieved by a discriminatory or unfair practice as defined by parts 4 to 7 of this

article may, by himself or his attorney-at-law, make, sign, and file with the commission a verified written charge in duplicate which shall state the name and address of the respondent alleged to have committed the discriminatory or unfair practice and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such charge. Prior to any other action by the commission, the respondent shall be notified of the charges filed against him.

(2) (a) After the filing of a charge, the director, with the assistance of the staff, shall make a prompt investigation thereof. If such charge alleges an unfair employment practice as defined in part 4 of this article or an unfair housing practice as defined in part 5 of this article, the director may subpoena witnesses and compel the testimony of witnesses and the production of books, papers, and records, if the testimony, books, papers, and records sought are limited to matters directly related to the charge. Any subpoena issued pursuant to this paragraph (a) shall be enforceable in the district court for the district in which the alleged discriminatory or unfair practice occurred and shall be issued only if the person or entity to be subpoenaed has refused or failed, after a proper request from the director, to provide voluntarily to the director the information sought by the subpoena.

(b) The director shall determine as promptly as possible whether probable cause exists for crediting the allegations of the charge, and shall follow one of the following courses of action:

(I) If the director determines that probable cause does not exist, he shall dismiss the charge and shall notify the person filing the charge and the respondent of such dismissal. In addition, in such notice the director shall advise both parties:

(A) That the charging party has the right to file an appeal of such dismissal with the commission within ten days of the date of mailing of the notification of such dismissal;

(B) That if the charging party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge he filed with the commission, he must do so: Within ninety days of the date of mailing of the notice specified in this subparagraph (I) if he does not file an appeal with the commission pursuant to sub-subparagraph (A) of this subparagraph (I); or within ninety days of the date of mailing of notice that the commission has dismissed the appeal specified in sub-subparagraph (A) of this subparagraph (I);

(C) That, if the charging party does not file an action within the time limits specified in sub-subparagraph (B) of this subparagraph (I), such action will be barred and no district court shall have jurisdiction to hear such action.

(II) If the director determines that probable cause exists, the respondent shall be served with written notice which states with specificity the legal authority and jurisdiction of the commission and the matters of fact and law asserted and the director shall order the charging party and the respondent to participate in compulsory mediation. Immediately after such notice has been given, the director shall endeavor to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion and by means of the compulsory mediation required by this subparagraph (II).

(c) The director's subpoena powers in cases relating to allegations of unfair employment practices are repealed on July 1, 2002. Prior to such repeal, the director's subpoena powers in such cases shall be reviewed as provided for in section 24-34-104, C.R.S.

(3) The members of the commission and its staff shall not disclose the filing of a charge, the information gathered during the investigation, or the efforts to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion unless such disclosure is made in connection with the conduct of the investigation, in connection with the filing of a petition seeking appropriate injunctive relief against the respondent under section 24-34-507, or at a public hearing or unless the complainant and the respondent agree to such disclosure. Nothing in this subsection (3) shall be construed to prevent the commission from disclosing its final action on a charge, including the reasons for dismissing such charge, the terms of a conciliation agreement, or the contents of an order issued after hearing.

(4) When the director is satisfied that further efforts to settle the matter by conference, conciliation, and persuasion will be futile, he shall so report to the commission. If the commission determines that the circumstances warrant, it shall issue and cause to be served, in the manner provided by section 24-4-105 (2), a written notice and complaint requiring the respondent to answer the charges at a formal hearing before the commission, a commissioner, or an administrative law judge. Such hearing shall be commenced within one hundred twenty days after the service of such written notice and complaint. Such notice and complaint shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted.

(5) In accordance with rules adopted by the commission, discovery procedures may be used by the commission and the parties under the same circumstances and in the same manner as is provided by the Colorado rules of civil procedure after the notice of hearing under subsection (4) of this section has been given.

(6) The respondent may file a written answer prior to the date of the hearing. When a respondent has failed to answer at a hearing, the commission, a commissioner, or the administrative law judge, as the case may be, may enter his default. For good cause shown, the entry of default may be set aside within ten days after the date of such entry. If the respondent is in default, testimony may be heard on behalf of the complainant. After hearing such testimony, the commission, a commissioner, or the administrative law judge, as the case may be, may enter such order as the evidence warrants.

(7) The commission or the complainant shall have the power to reasonably and fairly amend any complaint, and the respondent shall have like power to amend his answer.

(8) The hearing shall be conducted and decisions rendered in accordance with section 24-4-105; except that the decision shall also include a statement of the reasons why the findings of fact lead to the conclusions. The case in support of the complaint shall be presented at the hearing by one of the commission's attorneys or agents, but no one presenting the case in support of the complaint shall counsel or advise the commission, commissioner, or administrative law judge who hears the case. The director and the staff shall not participate in the hearing except as a witness, nor shall they participate in the deliberations of, or counsel or advise, the commission, commissioner, or administrative law judge in such case. At any such hearing, the person presenting the case in support of the complaint shall have the burden of showing that the respondent has engaged or is engaging in an unfair or discriminatory practice, and the respondent's conduct shall be presumed not to be unfair or discriminatory until proven otherwise.

(9) If, upon all the evidence at a hearing, there is a statement of findings and conclusions in accordance with section 24-4-105, together with a statement of reasons for such conclusions, showing that a respondent has engaged in or is engaging in any discriminatory or unfair practice as defined in parts 4 to 7 of this article, the commission shall issue and cause to be served upon the respondent an order requiring such respondent to cease and desist from such discriminatory or unfair practice and to take such action as it may order in accordance with the provisions of parts 4 to 7 of this article.

(10) If, upon all of the evidence at a hearing, there is a statement of findings and conclusions in accordance with section 24-4-105, together with a statement of reasons for such conclusions, showing that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue and cause to be served an order dismissing the complaint on the person alleging such discriminatory or unfair practice.

(11) If written notice that a formal hearing will be held is not served within two hundred seventy days after the filing of the charge, if the complainant has requested and received a notice of right to sue pursuant to subsection (15) of this section, or if the hearing is not commenced within the one-hundred-twenty-day period prescribed by subsection (4) of this section, the jurisdiction of the commission over the complaint shall cease, and the complainant may seek the relief authorized under this part 3 and parts 4 to 7 of this article against the respondent by filing a civil action in the district court for the district in which the alleged discriminatory or unfair practice occurred. Such action must be filed within ninety days of the date upon which the jurisdiction of the commission ceased, and if not so filed, it shall be barred and the district court shall have no jurisdiction to hear such action. If any party requests the extension of any time period prescribed by this subsection (11), such extension may be granted for good cause by the commission, a commissioner, or the administrative law judge, as the case may be, but the total period of all such extensions to either the respondent or the complainant shall not exceed ninety days each, and, in the case of multiple parties, the total period of all extensions shall not exceed one hundred eighty days.

(12) The division shall maintain a central file of decisions rendered under parts 3 to 7 of this article, and such file shall be open to the public for inspection during regular business hours.

(13) Any member of the commission and any person participating in good faith in the making of a complaint or a report or in any investigative or administrative proceeding authorized by parts 3 to 7 of this article shall be immune from liability in any civil action brought against him for acts occurring while acting in his capacity as a commission member or participant, respectively, if such individual was acting in good faith within the scope of his respective capacity, made a reasonable effort to obtain the facts of the matter as to which he acted, and acted in the reasonable belief that the action taken by him was warranted by the facts.

(14) No person may file a civil action in a district court in this state based on an alleged discriminatory or unfair practice prohibited by parts 4 to 7 of this article without first exhausting the proceedings and remedies available to him under this part 3 unless he shows, in an action filed in the appropriate district court, by clear and convincing evidence, his ill health which is of such a nature that pursuing administrative remedies would not provide timely and reasonable relief and would cause irreparable harm.

(15) The charging party in any action may request a written notice of right to sue at any time prior to service of a notice and complaint pursuant to subsection (4) of this section. Any request for notice of right to sue shall be in writing. A claimant's request for notice of right to sue made after the expiration of one hundred eighty days following the filing of the charge shall be granted promptly. If a claimant makes a request for a notice of right to sue prior to the expiration of one hundred eighty days following the filing of the charge, said request shall be granted upon a determination by the commission, a commissioner, or the administrative law judge that the investigation of the charge will not be completed within one hundred eighty days following the filing of the charge. A notice of right to sue shall constitute final agency action and exhaustion of administrative remedies and proceedings pursuant to this part 3.

24-34-307. Judicial review and enforcement. (1) Any complainant or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue an order, may obtain judicial review thereof, and the commission may obtain an order of court for its enforcement in a proceeding as provided in this section.

(2) Such proceeding shall be brought in the court of appeals by appropriate proceedings under section 24-4-106 (11).

(3) Such proceeding shall be initiated by the filing of a petition in the court of appeals and the service of a copy thereof upon the commission and upon all parties who appeared before the commission, and thereafter such proceeding shall be processed under the Colorado appellate rules. The court of appeals shall have jurisdiction of the proceeding and the questions determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified or setting aside the order of the commission in whole or in part.

(4) An objection that has not been urged before the commission shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(5) Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereof, if such party shows reasonable grounds for the failure to adduce such evidence before the commission.

(6) The findings of the commission as to the facts shall be conclusive if supported by substantial evidence.

(7) The jurisdiction of the court shall be exclusive and its judgment and order shall be final, subject to review as provided by law and the Colorado appellate rules.

(8) The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

(9) The commission may appear in court by its own attorney.

(9.5) Upon application by a person alleging a discriminatory housing practice under section 24-34-502 or a person against whom such a practice is alleged, the court may appoint an attorney for such person or may authorize the commencement or continuation of a civil action without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(10) The commission or court upon motion may grant a stay of the commission order pending appeal.

(11) Appeals filed under this section shall be heard expeditiously and determined upon the transcript filed, without requirement for printing. Hearings in the court of appeals under this part 3 shall take precedence over all other matters, except matters of the same character.

(12) If no proceeding to obtain judicial review is instituted by a complainant or respondent within forty-five days from the service of an order of the commission pursuant to section 24-34-306, the commission may obtain a decree of the district court for the enforcement of such order upon showing that such respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition for enforcement is brought.

24-34-308. Enforcement of federal law prohibited. Nothing in parts 3 to 8 of this article shall be construed to authorize the commission, the director, or the division to enforce any provision of federal law. Nothing in this section shall prevent the commission from accepting federal grants for the enforcement of parts 3 to 7.

PART 4 EMPLOYMENT PRACTICES

24-34-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Apprenticeship" means any program for the training of apprentices.

(2) "Employee" means any person employed by an employer, except a person in the domestic service of any person.

(3) "Employer" means the state of Colorado or any political subdivision, commission, department, institution, or school district thereof, and every other person employing persons within the state; but it does not mean religious organizations or associations, except such organizations or associations supported in whole or in part by money raised by taxation or public borrowing.

(4) "Employment agency" means any person undertaking to procure employees or opportunities to work for any other person or holding itself out to be equipped to do so.

(5) "Joint apprenticeship committee" means any association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.

(6) "Labor organization" means any organization which exists for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

(7) "On-the-job training" means any program designed to instruct a person who, while learning the particular job for which he is receiving instruction, is also employed at that job or who may be employed by the employer conducting the program during the course of the program or when the program is completed.

(8) "Unfair employment practice" means those practices specified as discriminatory or unfair in section 24-34-402.

(9) "Vocational school" means any school or institution conducting a course of instruction, training, or retraining to prepare individuals to follow an occupation or trade or to pursue a manual, mechanical, technical, industrial, business, commercial, office, personal service, or other nonprofessional occupation.

24-34-402. Discriminatory or unfair employment practices. (1) It shall be a discriminatory or unfair employment practice:

(a) For an employer to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of disability, race, creed, color, sex, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job;

(b) For an employment agency to refuse to list and properly classify for employment or to refer an individual for employment in a known available job for which such individual is otherwise qualified because of disability, race, creed, color, sex, age, national origin, or ancestry or for an employment agency to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of disability, race, creed, color, sex, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the applicant from the job, and the disability has a significant impact on the job;

(c) For a labor organization to exclude any individual otherwise qualified from full membership rights in such labor organization, or to expel any such individual from membership in such labor organization, or to otherwise discriminate against any of its members in the full enjoyment of work opportunity because of disability, race, creed, color, sex, age, national origin, or ancestry;

(d) For any employer, employment agency, or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership which expresses, either directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, age, national origin, or ancestry or intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification or required by and given to an agency of government for security reasons;

(e) For any person, whether or not an employer, an employment agency, a labor organization, or the employees or members thereof:

(I) To aid, abet, incite, compel, or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice;

(II) To obstruct or prevent any person from complying with the provisions of this part 4 or any order issued with respect thereto;

(III) To attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice;

(IV) To discriminate against any person because such person has opposed any practice made a discriminatory or an unfair employment practice by this part 4, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 4 of this article;

(f) For any employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling apprenticeship programs or providing, coordinating, or controlling on-the-job training programs or other instruction, training, or retraining programs:

(I) To deny to or withhold from any qualified person because of disability, race, creed, color, sex, age, national origin, or ancestry the right to be admitted to or participate in an apprenticeship training program, an on-the-job training program, or any other occupational instruction, training, or retraining program; but, with regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program, and the disability has a significant impact on participation in the program;

(II) To discriminate against any qualified person in pursuit of such programs or to discriminate against such a person in the terms, conditions, or privileges of such programs because of disability, race, creed, color, sex, age, national origin, or ancestry;

(III) To print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for such programs, or to make any inquiry in connection with such programs which expresses, directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, age, national origin, or ancestry or any intent to make any such limitation, specification, or discrimination, unless based on a bona fide occupational qualification;

(g) For any private employer to refuse to hire, or to discriminate against, any person, whether directly or indirectly, who is otherwise qualified for employment solely because the person did not apply for employment through a private employment agency; but an employer shall not be deemed to have violated the provisions of this section if such employer retains one or more employment agencies as exclusive suppliers of personnel and no employment fees are charged to an employee who is hired as a result of having to utilize the services of any such employment agency;

(h) (I) For any employer to discharge an employee or to refuse to hire a person solely on the basis that such employee or person is married to or plans to marry another employee of the employer; but this subparagraph (I) shall not apply to employers with twenty-five or fewer employees.

(II) It shall not be unfair or discriminatory for an employer to discharge an employee or to refuse to hire a person for the reasons stated in subparagraph (I) of this paragraph (h) under circumstances where:

(A) One spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse;

(B) One spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or

(C) One spouse has access to the employer's confidential information, including payroll and personnel records.

(2) Notwithstanding any provisions of this section to the contrary, it is not a discriminatory or an unfair employment practice for the division of employment and training of the department of labor and employment to ascertain and record the disability, sex, age, race, creed, color, or national origin of any individual for the purpose of making such reports as may be required by law to agencies of the federal or state government only. Said records may be made and kept in the manner required by the federal or state law, but no such information shall be divulged by said division or department to prospective employers as a basis for employment, except as provided in this subsection (2).

(3) Nothing in this section shall prohibit any employer from making individualized agreements with respect to compensation or the terms, conditions, or privileges of employment for persons suffering a disability if such individualized agreement is part of a therapeutic or job-training program of no more than twenty hours per week and lasting no more than eighteen months.

(4) Notwithstanding any other provision of this section to the contrary, it shall not be a discriminatory or an unfair employment practice with respect to age:

(a) To take any action otherwise prohibited by this section if age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular employer or where the differentiation is based on reasonable factors other than age; or

(b) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section; except that, unless authorized in paragraph (a) of this subsection (4), no such employee benefit plan shall require or permit the involuntary retirement of any individual because of the age of such individual; or

(c) To compel the retirement of any employee who is sixty-five years of age or older and under seventy years of age and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee and if such plan equals, in the aggregate, at least forty-four thousand dollars; or

(d) To discharge or otherwise discipline an individual for reasons other than age.

24-34-402.5. Unlawful prohibition of legal activities as a condition of employment. (1) It shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours unless such a restriction:

(a) Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or

(b) Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest.

(2) (a) Notwithstanding any other provisions of this article, the sole remedy for any person claiming to be aggrieved by a discriminatory or unfair employment practice as defined in this section shall be as follows: He may bring a civil suit for damages in any district court of competent jurisdiction and may sue for all wages and benefits which would have been due him up to and including the date of the judgment had the discriminatory or unfair employment practice not occurred; except that nothing in this section shall be construed to relieve such person from the obligation to mitigate his damages.

(b) The court shall award the prevailing party in such action court costs and a reasonable attorney fee.

24-34-403. Time limits on filing of charges. Any charge alleging a violation of this part 4 shall be filed with the commission pursuant to section 24-34-306 within six months after the alleged discriminatory or unfair employment practice occurred, and if not so filed, it shall be barred.

24-34-404. Charges by employers and others. Any employer, labor organization, joint apprenticeship committee, or vocational school whose employees or members, or some of them, refuse or threaten to refuse to comply with the provisions of this part 4 may file with the commission a verified written charge in duplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

24-34-405. Relief authorized. In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged in an unfair or discriminatory employment practice to take affirmative action regarding: Back pay; hiring, reinstatement, or upgrading of employees, with or without back pay; the referring of applicants for employment by any respondent employment agency; the restoration to membership by any respondent labor organization; the admission to or continuation in enrollment in an apprenticeship program, on-the-job training program, or a vocational school; the posting of notices; and the making of reports as to the manner of compliance. The commission, in its discretion, may order such remedies singly or in any combination.

24-34-406. Ruling on unemployment benefits not a bar. No findings, conclusions, or orders made pursuant to the provisions of articles 70 to 82 of title 8, C.R.S., shall be binding upon the commission in the exercise of its powers pursuant to parts 3 and 4 of this article; except that the commission may consider any explicit findings or conclusions on the issue of discrimination. If the decision under parts 3 and 4 of this article is in favor of the complainant, the respondent may present evidence of any unemployment benefits pursuant to articles 70 to 82 of title 8, C.R.S., which were received by the complainant based on the same occurrence. The relief granted to the complainant shall be reduced by the amount of such benefits, as provided in section 8-2-119, C.R.S.

PART 5 HOUSING PRACTICES

24-34-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Aggrieved person" means any person who claims to have been injured by a discriminatory housing practice or believes that he will be injured by a discriminatory housing practice that is about to occur.

(1.5) "Discriminate" includes both segregate and separate.

(1.6) "Familial status" means one or more individuals, who have not attained eighteen years of age, being domiciled with a parent or another person having legal custody of such individual or individuals or the designee of such parent or other persons having such custody with the written permission of such parent or other person. Familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained eighteen years of age.

(1.6) "Familial status" means one or more individuals, who have not attained eighteen years of age, being domiciled with a parent or another person having legal custody of or parental responsibilities for such individual or individuals or the designee of such parent or other persons having such custody or parental responsibilities

with the written permission of such parent or other person. Familial status shall apply to any person who is pregnant or is in the process of securing legal custody or parental responsibilities of any individual who has not attained eighteen years of age.

(2) "Housing" means any building, structure, vacant land, or part thereof offered for sale, lease, rent, or transfer of ownership; except that "housing" does not include any room offered for rent or lease in a single-family dwelling maintained and occupied in part by the owner or lessee of said dwelling as his household.

(3) "Person" has the meaning ascribed to such term in section 24-34-301 (5) and includes any owner, lessee, proprietor, manager, employee, or any agent of a person; but, for purposes of this part 5, "person" does not include any private club not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose unless such club has the purpose of promoting discrimination in the matter of housing against any person because of disability, race, creed, color, marital status, familial status, national origin, or ancestry.

(4) "Restrictive covenant" means any specification limiting the transfer, rental, or lease of any housing because of disability, race, creed, color, sex, marital status, familial status, national origin, or ancestry.

(5) "Transfer", as used in this part 5, shall not apply to transfer of property by will or by gift.

(6) "Unfair housing practices" means those practices specified in section 24-34-502.

24-34-502. Unfair housing practices prohibited. (1) It shall be an unfair housing practice and unlawful and hereby prohibited:

(a) For any person to refuse to show, sell, transfer, rent, or lease, or to refuse to receive and transmit any bona fide offer to buy, sell, rent, or lease, or otherwise make unavailable or deny or withhold from any person such housing because of disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry; to discriminate against any person because of disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, rental, or lease thereof or in the furnishing of facilities or services in connection therewith; or to cause to be made any written or oral inquiry or record concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of a person seeking to purchase, rent, or lease any housing; however, nothing in this paragraph (a) shall be construed to require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others;

(b) For any person to whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing to make or cause to be made any written or oral inquiry concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of a person seeking such financial assistance or concerning the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of prospective occupants to tenants of such housing, or to discriminate against any person because of the disability, race, creed, color, sex, marital status, familial status, religion, national origin, or ancestry of such person or prospective occupants or tenants in the terms, conditions, or privileges relating to the obtaining or use of any such financial assistance;

(c) (I) For any person to include in any transfer, sale, rental, or lease of housing any restrictive covenants, but shall not include any person who, in good faith and in the usual course of business, delivers any document or copy of a document regarding the transfer, sale, rental, or lease of housing which includes any restrictive covenants which are based upon race or religion, or reference thereto; or

(II) For any person to honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;

(d) For any person to make, print, or publish or cause to be made, printed, or published any notice or advertisement relating to the sale, transfer, rental, or lease of any housing which indicates any preference, limitation, specification, or discrimination based on disability, race, creed, color, sex, marital status, familial status, national origin, or ancestry;

(e) For any person: To aid, abet, incite, compel, or coerce the doing of any act defined in this section as an unfair housing practice; to obstruct or prevent any person from complying with the provisions of this part 5 or any order issued with respect thereto; to attempt either directly or indirectly to commit any act defined in this section to be an unfair housing practice; to discriminate against any person because such person has opposed any practice made an unfair housing practice by this part 5, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 5 of this article; or to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged, any other person in the exercise of any right granted or protected by parts 3 and 5 of this article;

(f) For any person to discharge, demote, or discriminate in matters of compensation against any employee or agent because of said employee's or agent's obedience to the provisions of this part 5;

(g) For any person whose business includes residential real estate-related transactions, which transactions involve the making or purchasing of loans secured by residential real estate or the provisions of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling or the selling, brokering, or appraising of residential real property, to discriminate against any person in making available such a transaction or in fixing the terms or conditions of such a transaction because of race, creed, color, religion, sex, marital status, disability, familial status, or national origin or ancestry;

(h) For any person to deny another person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility related to the business of selling or renting dwellings or to discriminate against such person in the terms or conditions of such access, membership, or participation on account of race, creed, color, religion, sex, disability, marital status, familial status, or national origin or ancestry;

(i) For any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status, creed, national origin, or ancestry;

(j) For any person to represent to any other person that any dwelling is not available for inspection, sale, or rental, when such dwelling is in fact available, for the purpose of discriminating against another person on the basis of race, color, religion, sex, disability, familial status, creed, national origin, or ancestry.

(2) The provisions of this section shall not apply to or prohibit compliance with local zoning ordinance provisions concerning residential restrictions on marital status.

(3) Nothing contained in this part 5 shall be construed to bar any religious or denominational institution or organization which is operated or supervised or controlled by or is operated in connection with a religious or denominational organization from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin, nor shall anything in this part 5 prohibit a private club not in fact open to the public which, as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(4) (Deleted by amendment, L. 92, p. 1122, § 4, effective July 1, 1992.)

(5) Nothing in this section shall be construed to prevent or restrict the sale, lease, rental, transfer, or development of housing designed or intended for the use of persons with disabilities.

(6) Nothing in this part 5 shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, creed, color, religion, sex, marital status, familial status, disability, religion, national origin, or ancestry.

(7) (a) Nothing in this section shall limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor shall any provision in this section regarding familial status apply with respect to housing for older persons.

(b) As used in this subsection (7), "housing for older persons" means housing provided under any state or federal program that the division determines is specifically designed and operated to assist older persons, or is intended for, and solely occupied by, persons sixty-two years of age or older, or is intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing intended and operated for occupancy by one person fifty-five years of age or older per unit qualifies as housing for older persons under this subsection (7), the division shall require the following:

(I) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, evidence that such housing is necessary to provide important housing opportunities for older persons;

(II) That at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(III) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of March 12, 1989, who do not meet the age requirements of paragraph (b) of this subsection (7) if the new occupants of such housing meet the age requirements of paragraph (b) of this subsection (7) or, by reason of unoccupied units, if such units are reserved for occupancy by persons who meet the age requirements of paragraph (b) of this subsection (7).

(8) (a) With respect to "familial status", nothing in this part 5 shall apply to the following:

(I) Any single-family house sold or rented by an owner if such private individual owner does not own more than three such single-family houses at any one time. In the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection (8) shall apply only with respect to one such sale within any twenty-four-month period. Such bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be excepted from the application of this subsection (8) only if such house is sold or rented:

(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(B) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this section; but nothing in this section shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title.

(II) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of paragraph (a) of this subsection (8), a person shall be deemed to be in the business of selling or renting dwellings if:

(I) He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(II) He has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(III) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(9) Repealed.

24-34-502.2. Unfair or discriminatory housing practices against persons with disabilities prohibited.

(1) It shall be an unfair or discriminatory housing practice and unlawful and hereby prohibited:

(a) For any person to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, or of any person who will reside in the dwelling after it is sold, rented, or made available, or of any person associated with such buyer or renter;

(b) For any person to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with such dwelling because of a disability of that person, of any person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or of any person associated with that person.

(2) For purposes of this section, "discrimination" includes, but is not limited to:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; and

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the federal "Fair Housing Amendments Act of 1988", a failure to design and construct those dwellings in such a manner that the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities. At least one building entrance shall be on an accessible route unless it is impractical to do so because of the terrain or the unusual characteristics of the site. All doors designed to allow passage into and within all premises within such dwellings shall be sufficiently wide to allow passage by persons with disabilities in wheelchairs, and all premises within such dwellings shall contain the following features of adaptive design:

(I) Accessible routes into and through the dwellings;

- (II) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- (III) Reinforcements in bathroom walls to allow later installation of grab bars; and
- (IV) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(3) Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for persons with physical disabilities (commonly cited as ANSI A117.1) suffices to satisfy the requirements of paragraph (c) of subsection (2) of this section.

(4) As used in this section, "covered multifamily dwellings" means:

- (a) Buildings consisting of four or more units if such buildings have one or more elevators; and
- (b) Ground floor units in other buildings consisting of four or more units.

24-34-503. Refusal to show housing. If the charge alleging an unfair housing practice relates to the refusal to show the housing involved, the commission, after proper investigations as set forth in section 24-34-306, may issue its order that the housing involved be shown to the person filing such charge, and, if the respondent refuses without good reason to comply therewith within three days, then the commission or any commissioner may file a petition pursuant to section 24-34-509. The district court shall hear such matters at the earliest possible time, and the court may waive the requirement of security for a petition filed under this section. If the district court finds that the denial to show is based upon an unfair housing practice, it shall order the respondent to immediately show said housing involved and also to make full disclosure concerning the sale, lease, or rental price and any other information being then given to the public.

24-34-504. Time limits on filing of charges. (1) Any charge alleging a violation of this part 5 shall be filed with the commission pursuant to section 24-34-306 within one year after the alleged unfair housing practice occurred, or it shall be barred.

(2) A civil action filed by the attorney general under this section shall be commenced not later than eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(3) The director, not later than ten days after filing or identifying additional respondents, shall serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this part 5, together with a copy of the original charge.

(4) The director shall commence an investigation of any charge filed pursuant to subsection (1) of this section within thirty days of such filing. Within one hundred days after the filing of the charge, the director shall determine, based on the facts, whether probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or the director has approved a conciliation agreement with respect to the charge. If the director is unable to complete the investigation within one hundred days after the filing of the charge, the director shall notify the parties of the reasons for not doing so.

(4.1) After a determination by the director that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall issue a notice and complaint as provided in section 24-34-306 (4). After such notice and complaint is issued by the commission, the complainant, respondent, or any aggrieved person on whose behalf the charge was filed may elect to have the claims asserted in the charge decided in a civil action in lieu of an administrative hearing. Such election shall be made in writing within twenty days after receipt of the notice and complaint issued by the commission. The commission shall provide notice of the election to all other parties to whom the notice and complaint relates.

(4.2) If all parties agree to have the charges decided in an administrative hearing, the commission shall hold a hearing as provided in section 24-34-306. If any party elects a civil action, the commission shall authorize the attorney general to commence and maintain a civil action in the appropriate state district court to obtain relief with respect to the discriminatory housing practice or practices alleged in the notice and complaint.

(4.3) Final administrative disposition of a charge filed pursuant to this section shall be made within one year of the date the charge was filed, unless it is impractical to do so. If the commission is unable to do so, the commission shall notify the complainant and the respondent, in writing, of the reasons that such disposition is impractical.

(5) Repealed.

24-34-505. Charges by other persons. Any person whose employees, agents, employers, or principals, or some of them, refuse or threaten to refuse to comply with the provisions of this part 5 may make, sign, and file with the commission a verified written charge in duplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

24-34-505.5. Enforcement by the attorney general. (1) Upon timely application, the attorney general may intervene in any civil action filed as provided in section 24-34-505.6 if the attorney general certifies that the case is of general public importance. Upon such intervention, the attorney general may obtain such relief as would be available to the director under section 24-34-306 in a civil action to which such section applies.

(2) Whenever the attorney general has probable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the attorney general may commence a civil action in any appropriate district court.

(3) The attorney general may commence a civil action in any appropriate district court for appropriate relief with respect to:

(a) A discriminatory housing practice referred to the attorney general by the commission under section 24-34-306; or

(b) Breach of a conciliation agreement referred to the attorney general by the director under section 24-34-506

(4) The attorney general, on behalf of the commission, division, or other party at whose request a subpoena is issued under this section, may enforce such subpoena in appropriate proceedings in the district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(5) Repealed.\

24-34-505.6. Enforcement by private persons. (1) Notwithstanding any provision of this article to the contrary, an aggrieved person may commence a civil action in an appropriate United States district court or state district court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(2) The computation of such two-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subsection (2) does not apply to actions arising from a breach of a conciliation agreement.

(3) Notwithstanding any provision of this article to the contrary, an aggrieved person may commence a civil action under this section whether or not a charge has been filed under section 24-34-306 and without regard to the status of any such charge, but if the director or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such charge except for the purpose of enforcing the terms of such an agreement.

(4) An aggrieved person may not commence a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a complaint issued by the commission if an administrative law judge has commenced a hearing on the record under this title with respect to such complaint.

(5) At the request of the aggrieved person, the court may appoint an attorney in accordance with section 24-34-307 (9.5).

(6) In addition to the relief which may be granted in accordance with section 24-34-508, the following relief is available:

(a) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages or may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate.

(b) The court, in its discretion, may allow the prevailing party reasonable attorney fees and costs.

(c) Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a charge with the commission or a civil action under this section.

(7) Repealed.

24-34-506. Probable cause. In making his determination on probable cause under the provisions of section 24-34-306 (2), the director shall find that probable cause exists if upon all the facts and circumstances a person of reasonable prudence and caution would be warranted in a belief that an unfair housing practice has been committed.

24-34-506.5. Conciliation agreements. (1) A conciliation agreement arising out of a conciliation shall be an agreement between the respondent and the charging party, and shall be subject to approval by the director.

(2) A conciliation agreement may provide for binding arbitration of the dispute arising from the charge. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(3) Each conciliation agreement shall be made public unless the charging party and respondent otherwise agree and the director determines that disclosure is not required to further the purposes of this section.

(4) Whenever the director has reasonable cause to believe that a respondent has breached a conciliation agreement, the director shall refer the matter to the attorney general with a recommendation that a civil action be filed under section 24-34-505.5 for the enforcement of such agreement.

(5) Repealed.

24-34-507. Injunctive relief. (1) After the filing of a charge pursuant to section 24-34-306 (1), the commission or a commissioner designated by the commission for that purpose may file in the name of the people of the state of Colorado through the attorney general of the state a petition in the district court of the county in which the alleged unfair housing practice occurred, or of any county in which a respondent resides, seeking appropriate injunctive relief against such respondent, including orders or decrees restraining and enjoining him from selling, renting, or otherwise making unavailable to the complainant any housing with respect to which the complaint is made, pending the final determination of proceedings before the commission under this part 5.

(2) Any injunctive relief granted pursuant to this section shall expire by its terms within such time after entry, not to exceed sixty days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. An affidavit of notice of hearing shall forthwith be filed in the office of the clerk of the district court wherein said petition is filed. The procedure for seeking and granting said injunctive relief, including temporary restraining orders and preliminary injunctions, shall be the procedure provided in the rules of civil procedure for courts of record in Colorado pertaining to injunctions, and the district court has power to grant such temporary relief or restraining orders as it deems just and proper.

(3) The district court shall hear matters on the request for an injunction at the earliest possible time.

(4) If, upon all the evidence at a hearing, the commission finds that a respondent has not engaged in any such unfair housing practice, the district court which has granted temporary relief or restraining orders pursuant to the petition filed by the commission or commissioner shall dismiss such temporary relief or restraining orders. Any person filing a charge alleging an unfair housing practice with the commission, a commissioner, or the attorney general may not thereafter apply, by himself or herself or by his or her attorney-at-law, directly to the district court for any further relief under this part 5, except as provided in section 24-34-307.

24-34-508. Relief authorized. (1) In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged in an unfair housing practice:

(a) To rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 5;

(b) To take affirmative action regarding the granting of financial assistance as provided in section 24-34-502 (1) (b) or the showing, sale, transfer, rental, or lease of housing;

(c) To make reports as to the manner of compliance with the order of the commission;

(d) To reimburse any person who was discriminated against for any fee charged in violation of this part 5 and for any actual expenses incurred in obtaining comparable alternate housing, as well as any storage or moving charges associated with obtaining such housing;

(e) To award actual damages suffered by the aggrieved person and injunctive or other equitable relief;

(f) To assess a civil penalty against the respondent in the following amounts:

(I) Not to exceed ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(II) Not to exceed twenty-five thousand dollars if the respondent has been adjudged to have committed any other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;

(III) Not to exceed fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.

24-34-509. Enforcement sought by commission. Upon refusal by a person to comply with any order, order pursuant to section 24-34-503, or regulation of the commission, the commission has authority to immediately seek an order in the district court enforcing the order or regulation of the commission. Such proceedings shall be brought in the district court in the county in which the respondent resides or transacts business.

PART 6
DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

24-34-601. Discrimination in places of public accommodation. (1) As used in this part 6, "place of public accommodation" means any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation facility; a barber shop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment conducted to serve the health, appearance, or physical condition of a person; a campsite or trailer camp; a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm; a mortuary, undertaking parlor, or cemetery; an educational institution; or any public building, park, arena, theatre, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor.

(2) It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability, race, creed, color, sex, marital status, national origin, or ancestry, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or, directly or indirectly, to publish, circulate, issue, display, post, or mail any written or printed communication, notice, or advertisement which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, marital status, national origin, or ancestry.

(2.5) It is a discriminatory practice and unlawful for any person to discriminate against any individual or group because such person or group has opposed any practice made a discriminatory practice by this part 6 or because such person or group has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to this part 6.

(3) Notwithstanding any other provisions of this section, it is not a discriminatory practice for a person to restrict admission to a place of public accommodation to individuals of one sex if such restriction has a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation.

24-34-602. Penalty and civil liability. Any person who violates any of the provisions of section 24-34-601 by denying to any citizen, except for reasons applicable alike to all citizens of every disability, race, creed, color, sex, marital status, national origin, or ancestry, and regardless of disability, race, creed, color, sex, marital status, national origin, or ancestry, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated or by aiding or inciting such denial, for every such offense, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars to the person aggrieved thereby to be recovered in any court of competent jurisdiction in the county where said offense was committed; and also for every such offense such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than three hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. A judgment in favor of the party aggrieved or punishment upon an indictment or information shall be a bar to either prosecution, respectively; but the relief provided by this section shall be an alternative to that authorized by section 24-34-306 (9), and a person who seeks redress under this section shall not be permitted to seek relief from the commission.

24-34-603. Jurisdiction of county court - trial. The county court in the county where the offense is committed shall have jurisdiction in all civil actions brought under this part 6 to recover damages to the extent of

the jurisdiction of the county court to recover a money demand in other actions. Either party shall have the right to have the cause tried by jury and to appeal from the judgment of the court in the same manner as in other civil suits.

24-34-604. Time limits on filing of charges. Any charge filed with the commission alleging a violation of this part 6 shall be filed pursuant to section 24-34-306 within sixty days after the alleged discriminatory act occurred, and if not so filed, it shall be barred.

24-34-605. Relief authorized. In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged in a discriminatory practice as defined in this part 6 to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 6; to make reports as to the manner of compliance with the order of the commission; and to take affirmative action, including the posting of notices setting forth the substantive rights of the public under this part 6.

PART 7 DISCRIMINATORY ADVERTISING

24-34-701. Publishing of discriminative matter forbidden. No person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, resort, or amusement, directly or indirectly, by himself or herself or through another person shall publish, issue, circulate, send, distribute, give away, or display in any way, manner, or shape or by any means or method, except as provided in this section, any communication, paper, poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement of any kind, nature, or description which is intended or calculated to discriminate or actually discriminates against any disability, race, creed, color, sex, marital status, national origin, or ancestry or against any of the members thereof in the matter of furnishing or neglecting or refusing to furnish to them or any one of them any lodging, housing, schooling, or tuition or any accommodation, right, privilege, advantage, or convenience offered to or enjoyed by the general public or which states that any of the accommodations, rights, privileges, advantages, or conveniences of any such place of public accommodation, resort, or amusement shall or will be refused, withheld from, or denied to any person or class of persons on account of disability, race, creed, color, sex, marital status, national origin, or ancestry or that the patronage, custom, presence, frequenting, dwelling, staying, or lodging at such place by any person or class of persons belonging to or purporting to be of any particular disability, race, creed, color, sex, marital status, national origin, or ancestry is unwelcome or objectionable or not acceptable, desired, or solicited.

24-34-702. Presumptive evidence. The production of any such communication, paper, poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, agent, superintendent, manager, or employee thereof, shall be presumptive evidence in any civil or criminal action or prosecution that the same was authorized by such person.

24-34-703. Places of public accommodation, resort, or amusement. A place of public accommodation, resort, or amusement, within the meaning of this part 7, shall be deemed to include any inn, tavern, or hotel, whether conducted for the entertainment, housing, or lodging of transient guests or for the benefit, use, or accommodation of those seeking health, recreation, or rest, and any restaurant, eating house, public conveyance on land or water, bathhouse, barber shop, theatre, and music hall.

24-34-704. Exceptions. Nothing in this part 7 shall be construed to prohibit the mailing of a private communication in writing sent in response to specific written inquiry.

24-34-705. Penalty. Any person who violates any of the provisions of this part 7 or who aids in, incites, causes, or brings about in whole or in part the violation of any of such provisions, for each and every violation

thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. The penalty provided by this section shall be an alternative to the relief authorized by section 24-34-306 (9), and a person who seeks redress under this section shall not be permitted to seek relief from the commission.

24-34-706. Time limits on filing of charges. Any charge filed with the commission alleging a violation of this part 7 shall be filed pursuant to section 24-34-306 within sixty days after the alleged discriminatory act occurred, and, if not so filed, it shall be barred.

24-34-707. Relief authorized. In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have violated any of the provisions of this part 7 to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 7; to make reports as to the manner of compliance with the order of the commission; and to take affirmative action, including the posting of notices setting forth the substantive rights of the public under this part 7.

PART 8 PERSONS WITH DISABILITIES - CIVIL RIGHTS

24-34-801. Legislative declaration. (1) The general assembly hereby declares that it is the policy of the state:

(a) To encourage and enable the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment;

(b) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied unless it is shown that the particular disability prevents the performance of the work involved;

(c) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places;

(d) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled are entitled to full and equal housing and full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation, hotels, motels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, including restaurants and grocery stores; and that the blind, the visually impaired, the deaf, the partially deaf, or the otherwise physically disabled person assume the liability for any injury that he or she might sustain which is attributable solely to causes originating with the nature of the particular disability involved and otherwise subject only to the conditions and limitations established by law and applicable alike to all persons.

(e) and (f) Repealed.

(2) Repealed.

24-34-802. Violation - penalty. Any person, firm, or corporation or the agent of any person, firm, or corporation that denies or interferes with the rights and the admittance to or enjoyment of the public facilities enumerated in section 24-34-801 (1) (b) to (1) (d) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

24-34-803. Rights of persons with assistance dogs. (1) A person with a disability, including but not limited to a blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled person, has the right to be accompanied by an assistance dog specially trained for that person without being required to pay an extra charge for the assistance dog in or on the following places and subject to the conditions and limitations established by law and applicable alike to all persons:

(a) Public streets, highways, walkways, public buildings, public facilities and services, and other public places;

(b) Any place of public accommodation or on public transportation services; and

(c) Any housing accommodation offered for rent, lease, or other compensation in the state.

(2) A trainer of an assistance dog has the right to be accompanied by an assistance dog that the trainer is in the process of training without being required to pay an extra charge for the assistance dog in or on the following places:

(a) Public streets, highways, walkways, public buildings, public facilities and services, and other public places; and

(b) Any place of public accommodation or on public transportation services.

(3) (a) An employer shall not refuse to permit an employee with a disability who is accompanied by an assistance dog to keep the employee's assistance dog with the employee at all times in the place of employment. An employer shall not fail or refuse to hire or discharge any person with a disability, or otherwise discriminate against any person with a disability, with respect to compensation, terms, conditions, or privileges of employment because that person with a disability is accompanied by an assistance dog specially trained for that person.

(b) An employer shall make reasonable accommodation to make the workplace accessible for an otherwise qualified person with a disability who is an applicant or employee and who is accompanied by an assistance dog specially trained for that person unless the employer can show that the accommodation would impose an undue hardship on the employer's business. For purposes of this paragraph (b), "undue hardship" means an action requiring significant difficulty or expense.

(4) The owner or the person having control or custody of an assistance dog or an assistance dog in training is liable for any damage to persons, premises, or facilities, including places of housing accommodation and places of employment, caused by that person's assistance dog or assistance dog in training. The person having control or custody of an assistance dog or an assistance dog in training shall be subject to the provisions of section 18-9-204.5, C.R.S.

(5) A person with a disability is exempt from any state or local licensing fees or charges that might otherwise apply in connection with owning an assistance dog.

(6) The mere presence of an assistance dog in a place of public accommodation shall not be grounds for any violation of a sanitary standard, rule, or regulation promulgated pursuant to section 25-4-1604, C.R.S.

(7) As used in this section, unless the context otherwise requires:

(a) "Assistance dog" means a dog that has been or is being trained as a guide dog, hearing dog, or service dog. Such terms are further defined as follows:

(I) "Guide dog" means a dog that has been or is being specially trained to aid a particular blind or visually impaired person.

(II) "Hearing dog" means a dog that has been or is being specially trained to aid a particular deaf or hearing impaired person.

(III) "Service dog" means a dog that has been or is being specially trained to aid a particular physically disabled person with a physical disability other than sight or hearing impairment.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12102 (2), as amended.

(c) "Employer" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12111 (5), as amended.

(d) "Housing accommodations" means any real property or portion thereof that is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons but does not include any single family residence, the occupants of which rent, lease, or furnish for compensation not more than one room in that residence.

(e) "Places of public accommodation" means the following categories of private entities:

(I) Inns, hotels, motels, or other places of lodging, except establishments located within buildings actually occupied by the proprietor as the proprietor's residence containing five or fewer rooms for rent or hire;

(II) Restaurants, bars, cafeterias, lunchrooms, lunch counters, soda fountains, casinos, or other establishments serving food or drink, including any such facility located on the premises of any retail establishment;

(III) Gasoline stations or garages;

(IV) Motion picture theaters, theaters, billiard or pool halls, concert halls, stadiums, sports arenas, amusement or recreation parks, or other places of exhibition or entertainment;

(V) Auditoriums, convention centers, lecture halls, or other places of public gathering;

(VI) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or retail establishments;

(VII) Laundromats, dry cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, offices of accountants or attorneys-at-law, pharmacies, insurance offices, professional offices of health care providers, hospitals, or other service establishments;

(VIII) Terminals, depots, or other stations used for specified purposes;

(IX) Museums, libraries, galleries, or other places of public display or collection;

(X) Parks, zoos, or other places of recreation;

(XI) Nursery, elementary, secondary, undergraduate, or graduate schools or other places of education;

(XII) Day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social service center establishments;

(XIII) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation;

(XIV) Any other establishment or place to which the public is invited; or

(XV) Any establishment physically containing or contained within any of the establishments described in this paragraph (e) that holds itself out as serving patrons of the described establishment.

(f) "Public transportation services" means common carriers of passengers or any other means of public conveyance or modes of transportation, including but not limited to airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or taxis.

(g) "Trainer of an assistance dog" means a person who is qualified to train dogs to serve as assistance dogs.

24-34-804. Violations - penalties. (1) It is unlawful for any person, firm, corporation, or agent of any person, firm, or corporation to:

(a) Withhold, deny, deprive, or attempt to withhold, deny, or deprive any person with a disability or trainer of any of the rights or privileges secured in section 24-34-803;

(b) Threaten to interfere with any of the rights of persons with disabilities or trainers secured in section 24-34-803;

(c) Punish or attempt to punish any person with a disability or trainer for exercising or attempting to exercise any right or privilege secured by section 24-34-803; or

(d) Interfere with, injure, or harm, or cause another dog to interfere with, injure, or harm, an assistance dog.

(2) Any person who violates any provision of subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(3) (a) Any person who violates any provision of subsection (1) of this section shall be liable to the person with a disability or trainer whose rights were affected for actual damages for economic loss, to be recovered in a civil action in a court in the county where the infringement of rights occurred or where the defendant resides.

(b) In any action commenced pursuant to this subsection (3), a court may award costs and reasonable attorney fees.

(4) Nothing in this section is intended to interfere with remedies or relief that any person might be entitled to pursuant to parts 3 to 7 of this article.